U. S. CIVIL SERVICE COMMISSION
PERSONNEL CLASSIFICATION DIVISION

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Reference Manual

OF

DECISIONS OF
THE COMPTROLLER GENERAL
ON THE CLASSIFICATION ACT
OF 1923, AS AMENDED

P.C.D. MANUAL A-4
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FOREWORD

This reference manual to decisions of the Comptroller General on the position-classification and pay features of the Classification Act of 1923, as amended, is a compilation of public information to be used in the training and everyday work of position classifiers in the Personnel Classification Division.

A few preliminary observations should be made:

1. The user of this manual should be reasonably familiar with the statutes involved, i. e., the Classification Act of March 4, 1923; the Joint Resolution of June 7, 1924; the Field Salary-Adjustment Act of December 6, 1924; the Welch Act of May 28, 1928; the Brookhart Act of July 3, 1930; Title V of the Economy Act of June 30, 1932; Title II of the Ramspeck Act of November 26, 1940; the Within-Grade Salary Advancement Act of August 1, 1941; the Custodial Pay Act of August 1, 1942; the Federal Employees Pay Act of 1945; the Federal Employees Pay Act of 1946; and the pertinent provisions of regulations thereunder.
2. In this manual, decisions dealing with transitional situations or noncontinuing statutory provisions are for the most part omitted.
3. Comptroller General's decisions prior to October 1, 1932, refer to the Personnel Classification Board. This agency was abolished on that date, under Title V of the Act of June 30, 1932, and its powers, duties, and functions transferred to the Civil Service Commission, where they are carried out by the Personnel Classification Division.
4. The decisions cited deal with the effect of the Classification Act of 1923, as amended, when no question arises out of any other law as to the legal right of an employee to hold a position or to receive payment. Under the provisions of the Civil Service Act and Rules and other statutes, employees must have a certain legal status [illegible] pay, under whatever salary statute n
their positions. Such provisions are n

I. POSITION-COVERAGE

What positions are covered by the provisions of the Classification Act of 1923, as amended? What positions are excluded therefrom? These questions are to be answered not only by studying the Classification Act and its amendments and the Comptroller General's interpretative decisions, but also by referring to the provisions of many other statutes, particularly those creating new organization units, authorizing activities or expenditures, or making appropriations.

The general rule is this: "In the absence of statutory exemption, the salary rates of personnel of all Federal agencies, both in the departmental and field service, are required to be fixed in accordance with the schedules or rates prescribed in the Classification Act, as amended." 20 Comp. Gen. 211, 212, October 24, 1940; 14 Comp. Gen. 420, November 27, 1934; 16 Comp. Gen. 1107, 1109, June 24, 1939; 17 Comp. Gen. 578, January 19, 1938; 18 Comp. Gen. 223, September 6, 1938; 18 Comp. Gen. 887, May 27, 1939; 19 Comp. Gen. 20, 22, July 7, 1939; 22 Comp. Gen. 491, November 23, 1942; 24 Comp. Gen. 147, August 21, 1944. Numerous decisions of the Comptroller General and well-settled principles of statutory construction support this rule.

It is the opinion of the General Accounting Office that in the departmental service, the primary duty and responsibility for determining whether a position falls within or without the purview of the Classification Act is that of the particular administrative office concerned and the Civil Service Commission. Compare 18 Comp. Gen. 955, 19 *id.* 352. That is, while the General Accounting Office has jurisdiction, if the necessity should arise, to determine whether the salary rates of employees occupying particular classes of positions should or should not be fixed in accordance with the Classification Act, the matter should be determined in the first instance by the joint action of administrative office and the Civil Service Commission. 4 Comp. Gen. 959; 16 *id.* 250, 660, 703; 17 *id.* 537; 19 *id.* 125; 20 *id.* 451; 21 *id.* 742.

In the field service, the General Accounting Office has taken jurisdiction to decide this question, upon submission by the head of the particular administrative office concerned. 5 Comp. Gen. 136; 10 *id.* 142, 322; 11 *id.* 259; 15 *id.* 128; 16 *id.* 49; 18 *id.* 796; 19 *id.* 160; 20 *id.* 211, 392, 484; 21 *id.* 724; 22 *id.* 718.

More specifically, any civilian position which falls within the provisions of the Classification Act must be allocated to service and grade (by the department or the Commission or both jointly), and be paid according to the pay scales of that Act, when it is—

A. A "position" in the legal sense; and

B. Located in the departmental or field service of a department, agency, or organization unit not expressly exempted; and
C. Of an occupational type not expressly exempted; and
D. Paid from Federal funds, not expressly exempted.

A. "POSITION" IN THE LEGAL SENSE

1. **Consists of duties and responsibilities.**—A position consists of duties and responsibilities. When either or both of these change materially, a new and different position may be created, the action on which would not be a "reallocation" but an initial or original allocation.

"If the duties of an employee are materially changed subsequent to July 1, 1924, either totally or partially, the effect would be to place the employee in a new and different position than the one held June 30, 1924, and the change in grade based on the change of duties is not a reallocation of the same position held June 30, 1924, but an original allocation of a new position, or the promotion, demotion, or transfer of an employee between existing positions." 4 Comp. Gen. 474, 475, November 24, 1924. *See also* 8 Comp. Gen. 496, 497, March 19, 1929; 13 Comp. Gen. 1, July 6, 1933.

2. **Occupied or vacant.**—Positions falling under the Classification Act may be either occupied or vacant. In Section 2 of the Act itself, the definition of a position begins: "The term 'position' means a specific civilian office or employment, *whether occupied or vacant* * * *." A vacancy is an unoccupied position which the department head intends to fill, whether newly created or left by the separation of a former employee. 4 Comp. Gen. 493, November 29, 1924.

3. **Permanent or temporary.**—The question whether a position falls under the Classification Act is not affected by the fact that it is temporary rather than permanent. Short or temporary duration of service, or payment from temporary appropriations does not operate to exclude positions from its scope. 4 Comp. Gen. 239, August 29, 1924; 4 Comp. Gen. 851, April 14, 1925; 19 Comp. Gen. 160, 162, August 5, 1939.

Positions of unskilled laborer, to be paid when actually employed; pharmacologist to be employed for 6 weeks; motion picture assistants to be employed for 6 days; are subject to the Classification Act. 4 Comp. Gen. 206, September 12, 1924.

The position of Commissioner of War Minerals Relief was created and filled at $7,500 by Secretary of Interior, prior to July 1, 1924. The Personnel Classification Board allocated it to P-5 (max. $6,000). The Secretary contended that the position was not a regular position under the Interior Department, but only a temporary position as assistant to the Secretary. The Comptroller General stated: "The definition of the term 'position' is very broad, including 'employment' as well as 'office.' No requirement appears as to the method of employment or appointment, or duration of service, in order to bring a 'civilian office or employment' within the law. That is to say, offices or employments, the appointment to and termination of which, are subject to the will of the head of an executive department under authority of law are equally included in the term 'position' as are offices or employments regularly created and filled." 4 Comp. Gen. 325, 326–327, September 24, 1924.

4. **Full-time or part-time.**—The question whether a position falls under the Classification Act is generally not affected by the fact that it is part-time rather than full-time. 5 Comp. Gen. 763, 765, March 26, 1926.

The decisions of this Office where the rules have been stated for fixing the compensation rates of part-time positions, have held in effect (1) the positions must be classified if the character of the duties performed is the same or similar to the duties of employees on a full-time basis required to be classified; (2) the rates of compensation must be fixed administratively on an annual basis having substantially the same relation to the rates fixed for full time in the same or similar positions which the part-time service required to be performed bears to full-time service; (3) that "service" of part-time professional and scientific personnel and those similarly employed may include both availability for duty as well as actual service; (4) the letters of appointment or contracts of employment should show the basis or method used in determining the per annum rate of compensation on a part-time basis; (5) the pay roll should reflect the classification grade, the annual salary rate, and the ratio or percentage that the part-time compensation bears to the full-time compensation in similar positions. 11 Comp. Gen. 105; *id.* 211; *id.* 217; *id.* 260; *id.* 302; 17 Comp. Gen. 303, 305, October 5, 1937.

For decisions relating to part-time physicians paid on an annual basis, see 11 Comp. Gen. 260, January 7, 1932; 17 Comp. Gen. 303, October 5, 1937; 21 Comp. Gen. 644, January 7, 1942; 21 Comp. Gen. 791, 798–799, February 21, 1942.

Under Title II, Section 4, of the Ramspeck Act of November 26, 1940, the President is authorized to exclude from the provisions of the Classification Act "field offices or positions, the duties of which are of purely temporary duration, or which are required only for brief periods at intervals." However, in the absence of an applicable Executive order, positions of part-time stenographers employed intermittently for short periods in the field service are subject to the pay scales of the Classification Act, as amended. 20 Comp. Gen. 484, February 25, 1941.

5. **Method of appointment thereto.**—The method prescribed by law or rule for filling a position or making appointments thereto has no legal bearing on the question whether a position falls under the Classification Act. Even the fact that appointments to the position must be made by the President does not exempt it from the Classification Act. 4 Comp. Gen. 625, January 22, 1925. In particular, the applicability or nonapplicability of the Civil Service Act and Rules to the position is not germane to this question. The Civil Service Act and the Classification Act are separate and distinct statutes, having a different position-coverage. 17 Comp. Gen. 578, January 19, 1938; 18 Comp. Gen. 223, September 6, 1938; 18 Comp. Gen. 796, April 18, 1939; 24 Comp. Gen. 260, September 25, 1944. Positions may by law be subject to one statute and not to the other.

Civil service status and salary status are two different things. See 21 Comp. Gen. 113, August 6, 1941; and B-21205, June 11, 1943, modifying 21 Comp. Gen. 386, October 28, 1941.

"The Civil Service laws and regulations, having to do with appointments, and the Classification Act of 1923, having to do with the fixing of salary rates, are separate and distinct with entirely different scopes and purposes. 17 Comp. Gen. 578; 18 *id.* 796. The fact that appointments to the positions listed in your letter are exempted from competitive examination does not exempt the positions from the Classification Act. 4 Comp. Gen. 827; 18 *id.* 223." 19 Comp. Gen. 160, August 5, 1939.

Placing a position under Schedule A of the Civil Service Rules excepts it from competition under the Civil Service Act, but does not except it from position-classification under the Classification Act. The following kinds of positions excepted at the time from competition under Schedule A of the Civil Service Rules have been the subject of decisions on this point: Attorneys, 4 Comp. Gen. 827, April 1, 1925; "chauffeur and special employee," Secret Service Division, 18 Comp. Gen. 223, September 6, 1938; cooperative field positions, Department of Agriculture, 15 Comp. Gen. 852, March 26, 1936, 16 Comp. Gen. 49, July 20, 1936; part-time stenographic positions for intermittent work in the field service, 20 Comp. Gen. 484, February 25, 1941.

When the President issues an Executive order excepting an employee or a position from the Civil Service Act and Rules, such action does not except the employee or the position from the requirements of the Classification Act. "Unlike the authority vested in the President by the terms of the civil service law to except positions from the competitive classified civil service by Executive order, there is no provision in the Classification Act as originally enacted or as amended prior to the act of November 26, 1940, 54 Stat. 1211, authorizing the President by Executive order to exempt positions from the Classification Act where the positions are otherwise required by law to be classified under said Act." 20 Comp. Gen. 451, 454–455, February 14, 1941.

Statutory provisions authorizing appointments to certain positions "without regard to the civil service laws" do not exempt the positions from the Classification Act of 1923, because the term "civil service laws" does not ordinarily include the Classification Act. 17 Comp. Gen. 578, January 19, 1938, interpreting the Civilian Conservation Corps Act of June 28, 1937, and affirmed in 20 Comp. Gen. 580, March 31, 1941. Where, however, the statute contains a clause authorizing appointments *and the fixing of compensation* without regard to the civil service laws, the positions are thereby excepted from the Classification Act. A–80867, October 20, 1936, interpreting the Rural Electrification Act of May 20, 1936. So also where a statute such as the Selective Training and Service Act of September 16, 1940, vests in the President the authority "to prescribe the necessary rules and regulations to carry out the provisions of this act" and "to appoint and *fix the compensation*" of personnel, the President is authorized to fix salary rates either in accordance with or with-

out regard to the provisions of the Classification Act of 1923, as amended. 20 Comp. Gen. 211, October 24, 1940.

Although the President is authorized to cover certain positions into the "classified civil service" by issuing an Executive order, such an order does not change the status of such positions with respect to the Classification Act. 18 Comp. Gen. 796, April 18, 1939 (with respect to Executive Order No. 7916, June 24, 1938). It should be noted that procedures for extending the Civil Service Act and the Classification Act are established separately in Titles I and II, respectively, of the Ramspeck Act of November 26, 1940.

6. **Examples of services not constituting positions.**—Certain kinds of services may not constitute a "position" as defined in the Classification Act.

"It is understood that an expert witness is hired to testify in individual cases or in a class of cases. Such hiring would not appear to be a 'specific civilian office or employment' within the meaning of the classification act, which defines 'position' as a 'specific civilian office or employment.' The hiring of an expert witness to testify in a specific case would not create a position or fill a position already existing. Therefore, there being no position to be allocated, the classification act does not apply to such hiring." 5 Comp. Gen. 302, 305, October 30, 1925.

A similar ruling applies to expert examiners of the Civil Service Commission. 5 Comp. Gen. 346, 347, November 13, 1925.

Part-time dentists in the Indian Field Service who are employed to furnish materials, supplies, equipment, and private office facilities, in addition to their services, are not required to be classified pursuant to the provisions of section 2 of the Brookhart Salary Act of July 3, 1930, 46 Stat. 1005. 19 Comp. Gen. 849, April 10, 1940.

In view of the circumstances now shown to be particularly applicable to the procurement of lumber inspection services (unavailability of qualified individual inspectors; control entirely by organizations or associations; laboratory service and use of equipment are included; and "probative value" attaching to certain lumber associations' status in the industry is a material part of the service furnished), the Office of Price Administration may contract with a lumber association to furnish lumber inspection services in connection with determining violations of ceiling prices on lumber—a duty imposed by law on said office—without regard to the Classification Act. 24 Comp. Gen. 272, October 4, 1944.

An individual engaged under contract to prepare and deliver a lecture or series of lectures at an Army military school on definite dates for a stipulated sum is not regarded as performing services under the supervision and control of the Government so as to be considered as employed on a personal service basis. 24 Comp. Gen. 414, November 28, 1944.

Note that Section 4 of the Ramspeck Act authorizes the President to exclude from the provisions of the Classification Act, as amended, and extended—

"* * * offices or positions filled by persons employed locally on a fee, contract, or piece-work basis who may lawfull
with their private profession, business, or
require only a portion of their time, wher
anticipate the proportion of t
ment."

B. ORGA

1. In general.—The
number of organic acts

certain organizations from the Classification Act. The original Classification Act of 1923, by defining what is meant by the term "department," covers the following organizations: (1) Executive departments, (2) other agencies in the executive branch, (3) the municipal government of the District of Columbia, (4) the Botanic Garden, (5) Library of Congress, (6) Library Building and Grounds, (7) Government Printing Office, and (8) the Smithsonian Institution. However, in the definition of a "position," the Act excludes the following organizations: (1) The Postal Service (but not the Post Office Department in Washington); (2) the community center department under the Board of Education of the District of Columbia; (3) the uniformed force of the Metropolitan Police Department of the District of Columbia, Fire Department of the District of Columbia and United States Park Police; and (4) the commissioned units of the Coast Guard, the Public Health Service, and the Coast and Geodetic Survey. Also, the Welch Act of May 28, 1928, (Sec. 4) exempts from its operation those positions in the Government Printing Office the pay of which is fixed under the Act of June 7, 1924.

Organizations of the legislative branch of the Government are not included within the Classification Act unless specifically named, e. g., Office of the Architect of the Capitol, 6 Comp. Gen. 565, March 3, 1927. Note, however, that this organization was placed under the Classification Act by later law, Sec. 3, Act of June 20, 1929, 46 Stat. 38.

Organizations of the judicial branch of the Federal Government are not included, in view of the fact that the definition of a "department" in the Classification Act confines the term to the executive branch except where other units are expressly named for inclusion.

Organizational exemptions made the subject of Comptroller General decisions include: Federal Housing Administration, 16 Comp. Gen. 1005, May 15, 1937; Foreign Service of the State Department, 5 Comp. Gen. 235, October 6, 1925. Each of these is excluded.

The Administrative Office of United States Courts, created by section 302 of the Act of August 7, 1939, is made expressly subject to the Classification Act by section 303 of the same act.

Clauses in organic acts or appropriation statutes excluding positions from the Classification Act usually authorize appointments or the fixing of compensation "without regard to the Classification Act of 1923, as amended," or "without regard to the provisions of other laws applicable to officers or employees of the United States." Sometimes the terms of a statute, although not in this form, make it clear that Congress did not intend to make the Classification Act applicable. For example, the Federal Deposit Insurance Corporation is excluded because its organic act authorizes the board of directors to "determine and prescribe the manner in which its

obligations shall be incurred and its expenses allowed and paid." U. S. Code, Title 12, Sec. 264 (k). See also 20 Comp. Gen. 211, October 24, 1940.

In the case of the United Nations Relief and Rehabilitation Administration which was created as an international agency on November 9, 1943, "through the signing of an agreement at the White House by the United Nations and other nations associated with them in the war", the Comptroller General held that being an international agency, it would not come within the terms "executive department or independent establishment of the Government, or any bureau or office thereof" as those terms are used in section 601 of the Economy Act, as amended (31 U. S. C. 686). 23 Comp. Gen. 564, February 2, 1944.

Title II of the Ramspeck Act of November 26, 1940, is inapplicable to certain organizations named in Section 3 (d) of that Title, as follows:

(i) Offices or positions in the Postal Service the compensation of which is fixed under an Act of Congress approved February 28, 1925 (43 Stat. 1053), as amended;

(ii) Offices or positions of teachers, librarians, school-attendance officers, and employees of the community-center department under the Board of Education of the District of Columbia, the compensation of which is fixed under an Act of Congress approved June 4, 1924 (43 Stat. 367), as amended;

(iii) Offices or positions in the Metropolitan Police, in the Fire Department of the District of Columbia, and in the United States Park Police, the compensation of which is fixed under an Act of Congress approved July 1, 1930 (46 Stat. 839);

(iv) Commissioned officers and enlisted personnel in the military and naval services and the Coast Guard, the commissioned officers in the Public Health Service and the Coast and Geodetic Survey, the compensation of which is fixed under an Act of Congress approved June 10, 1922 (42 Stat. 625), as amended;

(v) Offices or positions in the Government Printing Office the compensation of which is fixed under an Act of Congress approved June 7, 1924 (43 Stat. 658);

(vi) Offices or positions of foreign service officers in the Foreign Service of the United States the compensation of which is fixed under an Act of Congress approved May 24, 1924 (43 Stat. 140) as amended, including those offices and positions transferred under the provisions of the Act of Congress approved April 3, 1939, to the Department of State by part 1, section 1, of Reorganization Plan Numbered II, effective July 1, 1939;

(vii) Offices or positions of clerks in the Foreign Service of the United States the compensation of which is fixed under an Act of Congress approved February 23, 1931 (46 Stat. 1207), including those offices and positions transferred under the provisions of the Act of Congress approved April 3, 1939, to the Department of State by part 1, section 1, of Reorganization Plan Numbered II, effective July 1, 1939;

* * * * * * *

(xii) Offices or positions in the Tennessee Valley Authority.

Outside of these and certain occupational exemptions, the President, under Section 3 (a) of the Ramspeck Act of November 26, 1940, is authorized to extend, by Executive order, the Classification Act of 1923 to executive agencies in the District of Columbia or elsewhere exempted from such Act by statute.

2. **Field services.**—Under Section 2 of the Brookhart Act of July 3, 1930, the Classification Act is applicable to positions in the field service, unless expressly exempted. In other words, there is no general exemption of the field service from the Classification Act of 1923, as amended, although the legal responsibility for final allocations in the field service usually rests with the heads of agencies. Field positions are to be allocated to services and grades by the agencies concerned, on the basis of their duties and responsibilities, and the corresponding scales of pay placed in effect. 9 Comp. Gen. 229, 231, December 2, 1929; 10 Comp. Gen. 216, 218, November 13, 1930; 10 Comp. Gen. 349, February 10, 1931; 14 Comp. Gen. 448, December 11, 1934. Until recently, the Commission did not participate in the allocation of field positions, except on an advisory or consulting basis, when so requested by the department or agency concerned.

"The principles of classification require that the duties and responsibilities shall determine the grade or salary range of a field position, in the same manner as in the departmental service in the District of Columbia, according to the basic qualifications of the several grades as set forth in the classification act, as amended by the Brookhart Salary Act. The difference is that in the departmental service in the District of Columbia the allocation of positions is by the joint action of the administrative office and the Personnel Classification Board, whereas in the field service the sole authority to allocate the positions to the several grades or salary ranges is vested in the administrative office." 10 Comp. Gen. 519, 521, May 12, 1931.

Under Section 3 of the Welch Act of May 28, 1928, certain agencies were "authorized" to make field salary adjustments and this authority was limited to the agencies covered in the Act of December 6, 1924, 7 Comp. Gen. 816, June 26, 1928; 7 Comp. Gen. 818, June 26, 1928; 7 Comp. Gen. 828, June 27, 1928. The Brookhart Act, however, used the words "authorized and directed." This change of language made the provisions of Section 2 of the Brookhart Act mandatory. 10 Comp. Gen. 20, 25, July 16, 1930. Also, these provisions are now applicable to the field service generally, including newly created agencies, unless expressly exempted. 16 Comp. Gen. 1107, June 24, 1937.

"In view of the creation of numerous new Federal agencies since the passage of the Brookhart Salary Act, no significance is now given to the words of sec-

tion 2 of the act purporting to limit the salary adjustment of field positions to those the compensation of which was adjusted by the act of December 6, 1924 (43 Stat. 704), as it would appear unreasonable to assume in the absence of a specific provision to that effect, that the Congress could have intended to permit every new agency to fix salary rates without regard to the general standards it had already established generally throughout the Federal service. * * * Accordingly, there was adopted the general rule that, in the absence of statutory exemption, the salary rates of personnel of all Federal agencies, both in the departmental and field services, are required to be fixed in accordance with the schedules or rates prescribed in the classification act, as amended. See 14 Comp. Gen. 420; *id.* 763; decision of November 4, 1936, A-80878; decision of October 20, 1936, A-80867; and decision of October 15, 1936, A-80021." 16 Comp Gen. 1107, 1108-1109, June 24, 1937, dealing with the field service of the National Labor Relations Board.

Extra-territorial positions are not exempted because of their geographic location. Section 2 of the Brookhart Act of July 3, 1930, is applicable to field positions in the territories and insular possessions of the United States and in foreign countries, unless such positions are expressly excepted by statute from the Classification Act. 22 Comp. Gen. 491, November 23, 1942.

The phrase "so far as may be practicable," used in Section 2 of the Brookhart Act, has been interpreted by the Comptroller General so as to avoid loose implications contrary to the Congressional intent. It does not mean that the department may in effect entirely ignore the allocations of similar positions in the departmental service or that it may take into consideration factors other than duties and responsibilities in allocating field positions.

For example, the Comptroller General questioned the action of the War Department in making field appointments as clerk at $1,200, or clerk-typist at $1,200, without designating the service and grade allocation or any salary range. The department argued (1) that it was not mandatory to make appointments at the minimums of corresponding grades for the departmental service; (2) that $1,200 is the minimum of a range (e. g., CU-3); (3) that the Welch Act authorized adjustments "so far as may be practicable"; and (4) that "it is not practicable or desirable, in the opinion of this office, to appoint civilian employees in the Government service at far higher rates of pay than are paid locally by outside concerns for similar work."

The Comptroller General replied that this statement showed a misconception of the purpose and intent of the Welch and Brookhart Acts. There is no statute, he said, authorizing the War Department, since July 3, 1930, "to fix salary rates for such field employees solely by comparison with commercial rates in the particular locality where the duties are required to be performed." He construed the phrase "so far as may be practicable" as vesting in the administrative office "a discretion only as to the particular grade or salary range, as prescribed by the Classification Act, in which the field positions should be administratively placed or allocated based on the duties and responsibilities of the positions as compared with the duties and responsibilities of the same or similar positions in the departmental service, and not as vesting in the administrative office the authority to fix salary rates of civil employees in the field service without re-

gard to the provisions and salary ranges of the Classification Act." The law is not complied with, he further ruled, "simply by hiring a field employee at a salary rate authorized by the Welch and Brookhart Salary Acts regardless of the grade or salary range in which the position may fall" and that the minimum rate, $1,200, of CU–3, "properly may be fixed only for positions the duties and responsibilities of which are comparable to the duties and responsibilities of departmental positions properly allocated in CU–3, and may not be paid to clerks and typists, the positions held by the four employees in question." 11 Comp. Gen. 177, 181, November 12, 1931. Followed in 14 Comp. Gen. 420, November 27, 1934, and 18 Comp. Gen. 887, May 27, 1939.

The General Accounting Office asked the Treasury Department for an explanation of the field allocations of messenger, CAF–1, marine gasoline engineer, CAF–5, mechanics, CAF–4, and captain of the customs guards, CAF–6 The Commissioner of Customs in explaining these allocations to the CAF service said in part: "For convenience, CAF grades are used in the classification of all customs positions with the exception of those of messenger boy." The Comptroller General pointed out that this statement showed a misconception of the purpose and intent of the field allocation provisions of the Welch and Brookhart Acts. He said that "employees whose field positions are properly in the grades of the Custodial Service should not be paid at salary rates in the grades of the Clerical, Administrative, and Fiscal Service." A–40261, February 4, 1932

Pay rolls of field positions under the Department of Agriculture must show the Classification Act grade in which the positions have been administratively placed or allocated pursuant to section 2 of the Brookhart Salary Act of July 3, 1930, 46 Stat. 1005. In applying that statute, if no position in the departmental service in the District of Columbia, subject to the Classification Act is found to be comparable to a field position, nevertheless, the field position is required to be placed or allocated administratively in one of the salary grades prescribed by the Classification Act as nearly comparable to a departmental position as is practicable. 14 Comp. Gen. 763, April 15, 1935. But see 18 Comp Gen. 796, April 18, 1939, dealing with crafts and labor positions, in which it is said that " * * * it is only when the duties and responsibilities of field positions are the same or similar to positions in the departmental service in the District of Columbia subject to the Classification Act that the field positions, also, are required to be administratively classified"; and 19 Comp. Gen. 100, August 5, 1939, also dealing with crafts and allied positions, in which the following statement appears: " * * * it may be stated generally that if there be no similar positions in the departmental service within the purview of the Classification Act, under the general rules stated in the cited decisions, this office will not be required to object to the fixing of the salary rates of the positions in question without regard to the Classification Act, as amended."

The field service generally, subject to certain organizational and occupational exemptions, comes within the potential scope of the Classification Act under Title II of the Ramspeck Act of November 26, 1940, Section 3 (a) of which provides that:

Subject to the limitations contained in this section, whenever the President, after such classification and compensation surveys or investigations as he may direct the Commission to undertake, and upon consideration of the Commission's resulting reports and recommendations, shall find and declare that an extension of the provisions of the Classification Act of 1923, as amended, to any offices or positions in the agencies of the Government is necessary to the more efficient operation of the Government, he may by Executive order extend the provisions of the Classification Act of 1923, as amended, to any such offices or positions not at the time subject to such provisions: *Provided*, That in the case of any federally owned and controlled corporation organized under the laws of any State, Territory, or possession of the United States (including the Philippine Islands), or the District of Columbia, the President is authorized to direct that such action be

taken as will permit the compensation of such offices or positions to be fixed in accordance with the Classification Act of 1923, as amended, consistently with the laws of any such State, Territory, or possession, or the District of Columbia, or with the charter or articles of incorporation of any such corporation.

C. OCCUPATIONAL EXEMPTIONS

Section 2 of the Classification Act of 1923 excludes teachers, librarians, and school attendance officers under the Board of Education of the District of Columbia.

Section 5 of the Act (1) excludes from its coverage positions the duties of which are to perform or assist in apprentice, helper, or journeyman work in a recognized trade or craft; and skilled and semiskilled laborers; but (2) expressly includes such positions when the employees are "under the direction and control of the custodian of a public building or perform work which is subordinate, incidental, or preparatory to work of a professional, scientific, or technical character."

Under the language of Section 5 of the Classification Act, the following departmental groups, for example, are excluded: Foremen and head mechanics in the Bureau of Engraving and Printing who are engaged exclusively in the supervision and direction of the work of the various groups of mechanics or craftsmen and have no clerical, administrative or fiscal duties, 4 Comp. Gen. 900, April 29, 1925; employees whose paramount duties are those of automobile mechanics or machinists, together with their skilled helpers, 4 Comp. Gen. 959, May 20, 1925; and employees engaged in quantity lithographic reproduction processes. Civil Service Commission Departmental Circular No. 465, January 18, 1944.

According to the Comptroller General, the exception to the terms of Section 5 of the Classification Act of employees who "perform work which is subordinate, incidental, or preparatory to work of a professional, scientific, or technical character" refers "more particularly to the few assistants of individual professional, scientific, or technical men, and should not be considered as relating to an entire force of subordinates in the trades or crafts under a bureau or office simply because the duties and responsibilities of the supervisory officials may be professional, scientific, or technical in character." 10 Comp. Gen. 142, 144, September 29, 1930. See Civil Service Commission Departmental Circular No. 465, January 18, 1944. See also 13 Comp. Gen. 265, April 6, 1934.

Positions subject to the 40-hour-week statute of March 28, 1934, 48 Stat. 522, are excluded from the Classification Act, as amended. 20 Comp. Gen. 392, 397, January 18, 1941. This statute covers "wage board employees," i. e., employees in the several trades and occupations the compensation of which is set by wage boards or by other wage-fixing authorities, under procedure similar to that followed by wage boards, that is, with reference to wages paid to similar classes in commercial industries rather than with reference to salary rates or

schedules of rates specifically fixed by or pursuant to statute. U. S. Code Title 5, Section 673 (c); 13 Comp. Gen. 265, April 6, 1934.

The effect of the provisions of section 10 of the Bonneville Project Act of August 20, 1937, authorizing the appointment without regard to the civil service laws of "attorneys, engineers, and other experts * * * at not to exceed $7,500 per annum" and "other officers and employees * * * in accordance with the Classification Act," is to classify all attorneys and engineers appointed thereunder as "experts" subject to the $7,500 limitation, and to exclude such attorneys and engineers as would not otherwise be regarded as experts from the category "other officers and employees" whose salaries are to be fixed in accordance with the Classification Act. 14 Comp. Gen. 70, distinguished. 24 Comp. Gen. 351, November 6, 1944.

In some statutes, positions of designated occupations or kinds, such as "attorneys," "engineers," or "experts," are excluded from the Classification Act. In such instances, the Commission decides whether the duties and responsibilities of the position cause it to fall properly within the exempting language. 14 Comp. Gen. 70, July 25, 1934; 16 Comp. Gen. 250, September 15, 1936; 16 Comp. Gen. 703, January 29, 1937; 17 Comp. Gen. 537, January 3, 1938; 20 Comp. Gen. 451, February 14, 1941; Departmental Circular No. 151, April 5, 1937, and Supplement No. 1, June 24, 1938. The applicability of the Classification Act may not be avoided merely by an administrative designation of appointees as "experts." 13 Comp. Gen. 199, January 18, 1934.

Field positions of the same type as those excluded from the Classification Act as administered in the departmental service are also excluded from the provisions of Section 2 of the Brookhart Act. The test for determining whether a field position is subject to the principles of classification under the terms of Section 2 of the Brookhart Salary Act of July 3, 1930, 46 Stat. 1005, is the action taken by the Commission as to the same or similar position in the departmental service in the District of Columbia. 11 Comp. Gen. 259, January 6, 1932; 15 Comp. Gen. 128, August 12, 1935; 18 Comp. Gen. 796, April 18, 1939; 19 Comp. Gen. 160, August 5, 1939. For example, chauffeurs and truck drivers are not exempted from allocation to service and grade. 11 Comp. Gen. 259, January 6, 1932; A–95910, August 18, 1938; B–11394, July 30, 1940; 20 Comp. Gen. 392, 398, January 18, 1941. However, the Comptroller General has ruled that heavy-duty truck drivers (as distinguished from chauffeurs or drivers of light delivery trucks) who drive truck-trailer combinations or trucks carrying special equipment such as power winches or pole derricks, engaged on construction or maintenance work under arduous field conditions may be exempted. 21 Comp. Gen. 724, 728,

January 30, 1942; B-23894, March 24, 1942. See also B-34719, May 29, 1943.

Positions occupied by natives or aliens outside the continental United States and paid at local rates are excluded from administrative allocation. "* * * The entire basis of the classification of civilian employees, and the establishment of the salary rates prescribed by the Classification Act, as originally enacted and as amended, have been on the American standard of living and not on the standards maintained among natives living in the insular or island possessions of the United States." 10 Comp. Gen. 322, 323, 324, January 23, 1931; 20 Comp. Gen. 552, March 24, 1941. See also 13 Comp. Gen. 370; 18 Comp. Gen. 206, 209; 21 Comp. Gen. 947, April 8, 1942; and 22 Comp. Gen. 678, January 20, 1943.

The following kinds of field positions are also excluded from administrative allocations under Section 2 of the Brookhart Act: Temporary unskilled laborers paid at local prevailing rates in the field service, 5 Comp. Gen. 136, August 21, 1925; cooperative field positions of the Department of Agriculture, which are controlled in whole or in part by state or other non-federal organizations, either as to the duties or salaries of the employees involved. 16 Comp. Gen. 49, July 20, 1936. But where, as in certain work of the Geological Survey, employees engaged on State-Federal cooperative projects are controlled as to appointment, fixing of salaries, and supervision, by the Federal Government rather than by the States, they are within the purview of Section 2 of the Brookhart Act. 22 Comp. Gen. 718, January 30, 1943, modifying 21 Comp. Gen. 1145, June 30, 1942.

Although a joint fund may not have been established for payment of salaries, persons who are employed and supervised jointly by the United States and British Governments on work of the Anglo-American Caribbean Commission and who devote no particular period of their employment exclusively to the work of either government are not employees of the United States, occupying "positions" within the meaning of the definitions of those terms appearing in section 2 of the Classification Act of 1923. 24 Comp. Gen. 384, November 17, 1944.

In case a position involves work partly within and partly outside the Classification Act, the paramount duties control. 4 Comp. Gen. 959, May 20, 1925; 19 Comp. Gen. 160, 162, August 5, 1939.

Under Section 3 (d), Title II of the Ramspeck Act of November 26, 1940 (as amended by section 5 (a), Act of August 1, 1941, and section 2 (b), Act of August 1, 1942), the provisions of Title II are inapplicable to certain occupational classes of employees, as follows:

(11) Offices or positions of teachers, librarians, school attendance officers, and employees of the community-center department under the Board of Education of the District of Columbia, the compensation of which is fixed under an Act of Congress approved June 4, 1924 (43 Stat. 367), as amended;

(viii) Offices or positions of clerks in the Customs Service of the Treasury Department the compensation of which is fixed under an Act of Congress approved May 29, 1928 (45 Stat. 955), as amended;

(ix) Offices or positions of inspectors in the Immigration and Naturalization Service of the Department of Justice the compensation of which is fixed under an Act of Congress approved May 29, 1928 (45 Stat. 954), as amended;

(x) Offices or positions the duties of which are to serve as an officer or member of the crew of a vessel, except that the President may by Executive order extend the provisions of the Classification Act of 1923, as amended, to offices or positions in the Bureau of Lighthouses;

(xi) Offices or positions the duties of which are to perform the work of an apprentice, helper, or journeyman in a recognized trade or craft, or other skilled mechanical craft, or the work of an unskilled, semiskilled, or skilled laborer, except that whenever such offices or positions involve work in the regular custody, operation, or maintenance of a Government building, or other Government property, or work which is subordinate, incidental, or preparatory to work of a professional, scientific, or technical character, the President, upon a finding that the characteristics and working conditions of such offices or positions render them substantially the same as comparable offices or positions in the District of Columbia included within the Classification Act of 1923, as amended, may by Executive order extend the provisions of such Act to include them.

Also, under Section 4 of Title II, the President is authorized to exclude:

Offices or positions on work which is financed jointly by the United States and a State, Territory, or possession of the United States (including the Philippine Islands), or political subdivision thereof, or cooperating persons or organizations outside the service of the Federal Government, and the pay of which is fixed under a cooperative agreement, with the United States; offices or positions, none or only part of the compensation of which is paid from funds of the United States; offices or positions filled by inmates, patients, students, or beneficiaries in Government institutions; offices or positions outside the States of the United States and the District of Columbia filled by natives of Territories or possessions of the United States (including the Philippine Islands) or foreign nationals; emergency or seasonal offices or positions in the field service, or other field offices or positions, the duties of which are of purely temporary duration, or which are required only for brief periods at intervals.

D. FISCAL EXEMPTIONS

Funds appropriated for personal services must be expended in accordance with the Classification Act unless the appropriation item or the organic act of the agency contains an express exemption.

Exempting language must be unambiguous and very specific. For example, the statutory provision in the appropriation act under which the compensation of charwomen working part-time at the courthouse occupied by the Supreme Court of the District of Columbia is "to be expended under the direction of the Attorney General" fixes the administrative responsibility for expenditures under the appropriation, but does not authorize the fixing of salary rates of such employees otherwise than under the terms of the Classification Act. 11 Comp. Gen. 110, September 24, 1931.

Similarly, the appropriation item, "Emergency F[illegible]
dent" in the Military Appropriation Act of June
377, authorizing expenditures "without reference
does not authorize disregard of other Federal st
Comp. Gen. 267, 270, November 19, 1940. "But

10 of the Selective Training and Service Act of 1940, the Congress has vested in the President the authority 'to prescribe the necessary rules and regulations to carry out the provisions of this Act' and 'to appoint and fix the compensation of such other officers, agents and employees as he may deem necessary to carry out the provisions of this Act', the conclusion is warranted that the intent of the statute is to authorize the President to fix salary rates by regulation, or to prescribe by regulation the procedure for fixing such salary rates, either in accordance with, or without regard to, the provisions of the Classification Act." 20 Comp. Gen. 211, 212–213, October 24, 1940.

Positions paid from trust funds created out of contributions from Federal pay or salary are subject to the Classification Act. In particular, positions at U. S. Soldiers' Home paid out of contributions from soldiers' pay, fines, forfeitures, etc., were held to be so subject. 16 Comp. Gen. 650, January 16, 1937. Later legislation, however, affirmatively excluded Soldiers' Home positions from the Classification Act. See also 17 Comp. Gen. 786, March 29, 1938, dealing with the status (as Government or private) of positions paid from a "laundry fund" created by charges against midshipmen's pay and allowances.

Where an agency, such as the Bureau of Motor Carriers, is authorized to employ State personnel and to reimburse the State for such services, the reimbursable salary items are the regular salary rates paid by the State to the employees whose services are utilized. The Classification Act of 1923 is not applicable to such employments. 15 Comp. Gen. 473, December 3, 1935.

Section 601 of the Economy Act of June 30, 1932, prescribes the procedure by which one department may transfer funds to another in payment for work done. Such funds, although originally appropriated subject to the Classification Act, are to be used in accordance with laws applicable to the agency receiving the funds rather than those applicable to the transferring agency. In 21 Comp. Gen. 749, it is stated that the question

> ". . . whether the Classification Act shall govern the salary rates of employees paid from funds *properly* transferred under the provisions of said act (i.e. Section 601) is to be determined by the laws applicable to the agency receiving the funds, rather than by those relating to the transferring agency."

The only limitation on this general rule is the other rule, also stated in 21 Comp. Gen. 749, that "where work can be performed by a department or agency with its own funds and its own facilities as well as it could be performed by another department or agency, funds could not legally be transferred to such other department or agency merely *for the purpose of avoiding restrictions* imposed upon the

transferring agency in the employment of personnel." Where as in the case of the Bureau of the Census, the second agency—

> * * * by reason of its equipment, specially trained personnel and exclusive possession of certain statistical data, is equipped to perform for another agency statistical work for which the funds of the latter agency would be available if the work were performed by it, employees of the said Bureau who are compensated without regard to the Classification Act may be used in performance of the work—whether the work be done on a reimbursement or advance-of-funds basis—even though the appropriations from which the funds are to be transferred in payment for the work require that employees of the transferring agency be paid in accordance with the Classification Act. 21 Comp. Gen. 254; 18 *id.* 489; 17 *id.* 900; 16 *id.* 3, distinguished. 21 Comp. Gen. 740, February 4, 1942.

In certain instances funds appropriated by Congress or allotted by the President are authorized to be expended without regard to the Classification Act. Some of these appropriations or allotments are subject to a salary schedule promulgated by the President in Executive Order 6440 of November 18, 1933, as amended by Executive Order 6746 of June 21, 1934. This Executive order applies also to positions in regular establishments paid from certain allotted funds if the salaries of such positions are not otherwise controlled by the Classification Act or other statute. 13 Comp. Gen. 186, January 5, 1934. This point, in fact, is specifically covered in Executive Order 6554 of January 10, 1934. 13 Comp. Gen. 197, January 17, 1934.

Authorization contained in an appropriation act to pay certain persons (e.g. scientists and technicists in the Navy Department, Bureau of Ships) a per diem rate of compensation limited to $25 for parttime or intermittent employment, under an instrument designated as a contract, represents an exemption from the Civil Service laws and regulations and from the provisions of the Classification Act of 1923. 24 Comp. Gen. 924, June 23, 1945.

Under Executive Order 6440 or 6746, Executive Order No. 7092, July 3, 1935, and Executive Order No. 8134, May 15, 1939, departments and agencies expending funds subject thereto may, in their discretion, elect to follow either the Classification Act schedules or the Executive order schedules in fixing the compensation of positions paid from such funds. 13 Comp. Gen. 222, February 20, 1934. They must, however, elect one or the other. 14 Comp. Gen. 136, August 18, 1934; 14 Comp. Gen. 420, November 27, 1934; 14 Comp. Gen. 539, January 15, 1935.

When a department or agency, under any of these Executive orders elects to follow the compensation schedules of the Classification Act and the positions concerned are located in the departmental service, the department must also accept the administrative provisions of the Act relating to the final allocation authority of the Commission. It may, however, elect to have some of these specific

positions compensated under the Classification Act and some compensated under the Executive order.

"The Executive order requires all emergency positions, not expressly excepted by its terms, to be classified. With respect to such emergency positions in the regular executive departments and independent establishments, two separate and distinct procedures are made available—(1) the procedure established by the Classification Act, as amended, and (2) the new procedure set forth in the Executive order. While the heads of executive departments and independent establishments are granted an election to proceed under either procedure in classifying and fixing the salary rates of emergency positions under their respective departments or establishments, and may exercise such election with respect to any emergency position or group of positions with the result that some of the emergency positions in any such department or establishment may be classified under one procedure and some under the other procedure, there exists no authority to adopt a part of one procedure and a part of the other, or to classify without compliance with all of the requirements of whichever of the two authorized procedures is adopted." 14 Comp. Gen. 867, 868–869, May 31, 1935.

II. BASIS OF POSITION-CLASSIFICATION

The duties and responsibilities of positions determine the class to which the position belongs and the grade to which it shall be allocated. 4 Comp. Gen. 625, 626, January 22, 1925. This principle applies also to the field services under the provisions of the Act of December 6, 1924, the Welch Act of May 28, 1928, and the Brookhart Act of July 3, 1930.

In the allocation of a "position" under the terms of the Classification Act of 1923, the Personnel Classification Board is required to take into consideration all duties attaching thereto regardless of the different appropriations or funds from which different portions of the compensation for such duties may be payable. 4 Comp. Gen. 143, 144, August 1, 1924

While the Classification Act in all its phases was not extended to the field service thereby, the authority in the appropriation act to adjust the rates of pay of personnel in the field services therein appropriated for requires that the duties and responsibilities of a position will determine the class to which such position belongs and the grade to which it shall be allocated. 4 Comp. Gen. 775, 776, March 12, 1925.

The principles of classification require that the duties and responsibilities shall determine the grade or salary range of a field position, in the same manner as in the departmental service in the District of Columbia, according to the basic qualifications of the several grades as set forth in the Classification Act, as amended by the Brookhart Salary Act * * *. 10 Comp. Gen. 519, 521, May 12, 1931.

It is the position and not the employee that is classified and allocated.

"The submission would seem to indicate you are under the impression that it is the employee who is classified rather than the position. Bearing in mind always that the 'position' is what the law requires to be classified rather than the incumbent, there should be no difficulty in obtaining allocation of temporary positions sufficiently in advance of the need of filling such positions." 4 Comp. Gen. 230, 241–242, August 20, 1924. Affirmed in 4 Comp. Gen. 296, September 12, 1924.

Because of the distinctions between allocating a position and qualifying an employee to fill the position, as to legal basis and as to the factors to be taken into consideration, certain items are not for consideration in allocating a position in its proper class and grade. For example, "the status of the individual is not involved in the creation and allocation of a new position", 8 Comp. Gen. 393, 394, January 24, 1929; and "the qualifications of an incumbent for a position go to the matter of appointment, but may not be considered in placing or locating the position in its proper grade." Comp. Gen. Dec. / December 1, 1931.

The general principle is stated as follows in a Comptroll eral's decision on Executive Order No. 8955, December 1, 1 tending the Classification Act under Title II of the Act of No

26, 1940, to certain positions outside the continental United States (this order was revoked by Executive Order No. 9314, March 15, 1943):

In line with the uniform application of the Classification Act of 1923, as amended, it must be concluded that the above-quoted provisions of the act of November 26, 1940, and the Executive order issued pursuant thereto, relate exclusively to the classification of *positions;* not to the qualification of individual employees or incumbents. See the provisions of the original classification act, as well as Title II of the act of November 26, 1940, in its entirety, which relate to "offices or positions". See, also, 4 Comp. Gen 239; *id.* 474; *id.* 493; *id.* 827; 5 *id.* 763; 6 *id.* 530, 531; 8 *id.* 496; 13 *id.* 1; 17 *id.* 578; 18 *id.* 796; 19 *id.* 100; 20 *id.* 451; *id.* 580. Accordingly, the Executive order, extending the classification act to the positions involved, must be interpreted and applied in the light of the basic concept of the classification act. 21 Comp. Gen. 947, 950. See also 21 Comp. Gen. 1067, 1069, May 29, 1942.

The employee's payroll title is immaterial in allocating the position. "The principle of the Classification Act is that the 'position' is allocated on the basis of the duties performed, not on the basis of title or designation of the particular employee as it appeared on the payroll June 30, 1924." 4 Comp. Gen. 174, August 13, 1924.

Also, differences in the relative efficiency of employees on the same class of work are to be recognized by salary increases within the range of pay for a grade and do not form a basis for allocating or reallocating positions. See 4 Comp. Gen. 474, November 24, 1924.

There is, furthermore, a difference between (a) classifying a position and allocating it to its appropriate grade and (b) fixing or determining the pay rate which is applicable. Certain prohibitions against payment of salary due to reallocations have not operated against the classification features of the Classification Act, as distinguished from its pay features.

A legislative prohibition against paying increases in salary due to reallocations does not prevent the proper allocation of the *position.* 13 Comp. Gen. 1, July 6, 1933; 14 Comp. Gen. 3, July 2, 1934.

The fiscal year 1940 prohibitory personnel compensation and classification change provisions of section 10 (b) of the Reorganization Act of 1939, 53 Stat. 563, would prohibit the making effective, both as to grade and salary, during the fiscal year 1940, of a reallocation of a position in the Federal Security Agency occupied at the time of the Agency's creation. 19 Comp. Gen. 237, August 22, 1939.

While the same or similar class of positions in the District of Columbia and in the field under an emergency agency is required by Executive Order No. 6746, dated June 21, 1934, to be classified in the same Executive order grade, the salary rates fixed in the Executive order are maximum only and those fixed for field positions may be either more or less than those fixed for the same or similar class of positions in the District of Columbia, provided, in either case, that the maximum rate prescribed by the Executive order is not exceeded. 14 Comp. Gen. 843, May 22, 1935.

The Naval Appropriation Act of May 6, 1941, placed a limitation on the number of additional positions that could be paid at rates in excess of $5,000. This did not preclude the proper allocation of such additional positions to grades having rates in excess of $5,000.

ns of the Comptroller General contain suggestions that
conditions may properly be taken into consideration

in allocating positions. (See also Section 3 (c), Title II, of the Ramspeck Act of November 26, 1940.) For example:

"* * * The hazardous nature of the positions at St. Elizabeths Hospital and the necessity of employees to be subject to call 24 hours of the day may be elements proper for the consideration by the Personnel Classification Board in determining the grade in which the position shall be allocated. * * *" A-28927, August 15, 1928.

"Circumstances or conditions incident to employment necessitating an employee or class of employees to be regularly and continuously available for duty outside the hours employees are ordinarily on duty as required by the Navy Department, must be considered a part of the duties and responsibilities of that position or class of positions, and the 'pay' within the meaning of the saving clause [in the Brookhart Act], and otherwise, for that position or class of positions is to be computed accordingly. * * *" 10 Comp. Gen. 379, 381, February 20, 1931.

(August 1944)

III. LEGAL RESPONSIBILITY OF THE CIVIL SERVICE COMMISSION IN POSITION-CLASSIFICATION MATTERS

A. ALLOCATIONS AND CHANGES IN ALLOCATIONS

1. **Distinction between the departmental and the field service.**—The authority and the legal responsibilities of the Civil Service Commission with respect to the allocation of positions differ as between the departmental service and the field service.

The departmental service consists of the national headquarters units of the various departments and agencies. The field service consists of local units which usually serve a particular area and which are all subject to the general direction and supervision of some departmental organization.

Distinctions between the departmental and the field service have been discussed in the following decisions, among others: 15 Op. Atty Gen 262, 267, May 16, 1877; 19 id. 624, August 2, 1890; 21 id. 407, September 10, 1896; 22 id 62, May 4, 1898; 26 id. 254, May 17, 1907; 28 id 78, November 15, 1909; 29 id. 481, 485, June 28, 1912; 31 id. 406, 407, March 29, 1919; 12 Comp. Dec. 810, June 28, 1906; 21 id. 709, April 9, 1915; 26 id 1062, June 22, 1920; 27 id. 122, August 2, 1920; 27 id. 648, January 22, 1921; 4 Comp. Gen. 291, September 11, 1924; 5 id. 272, October 19, 1925; 8 id. 40, July 28, 1928; 10 id. 899, March 6, 1931; 17 id. 564, 565, January 11, 1938; 18 id. 631, January 9, 1940; 19 id. 631, 632, January 9, 1941; 20 id. 803, May 21, 1941; 21 id. 541, December 8, 1941; 21 id. 619, January 8, 1942.

The original Classification Act of March 4, 1923, provided that the Commission's final allocation responsibility should cover positions "in the departments within the District of Columbia." At that time and until recently all of the departmental service was located in the District of Columbia. It has been ruled, however, that a departmental force does not lose its identity as such because it is "decentralized" and moved to a location outside of the District of Columbia. In such cases the nature of the organization or work, rather than physical location, controls the status of the positions as departmental or field.

In 17 Comp. Gen. 564, 565, January 11, 1938, the Comptroller General dealt with the status (with reference to working hours a week) of certain Social Security Board employees located in Baltimore, some

of whom were engaged on work of a general headquarters nature, rather than applying or enforcing laws locally. He stated:

* * * A force engaged exclusively in departmental work, that is, in general supervision and administrative direction and control of the various field forces, even though with headquarters outside of the District of Columbia—in this instance at Baltimore—is nevertheless a departmental force as much so as the departmental force in the District of Columbia.

The Naval Appropriation Act of May 6, 1941, for the fiscal year 1942 provided—

That no part of this or any other appropriation for the Navy Department or the Naval Establishment for the fiscal years 1941 and 1942, or of funds allotted to the Navy Department, shall be available for the employment of a greater number than eight thousand seven hundred and fifty civilian officers and employees *in the Navy Department proper, at Washington*, except in pursuance of specific appropriations as to numbers hereinafter provided. [Italics supplied.]

The Navy Department asked the Comptroller General whether this limitation was applicable to "those civilian officers and employees who may be detailed or assigned for the performance of duty at places outside the Navy Department proper, at Washington, D. C., that is, for example, in temporary buildings which may be authorized for the Navy Department at Arlington, Virginia."

The Comptroller General, citing and quoting from 17 Comp. Gen. 564, 565, held:

The appropriation limitation on the total number of civilian employees in the Navy Department proper, at Washington refers to the departmental service as distinguished from the field service. * * * The restriction * * * would be applicable even though such departmental employees were temporarily stationed at Arlington or at any other place outside of the District of Columbia. 20 Comp. Gen. 803, May 21, 1941.

Finally, in 21 Comp. Gen. 649, January 8, 1942, it was ruled that—

The words "in the District of Columbia" appearing in the Classification Act of 1923, and subsequent amendments thereto, in connection with the words "departmental service" do not limit the jurisdiction of the Civil Service Commission under the classification act to departmental positions located within the geographical limits of the District of Columbia, and, therefore, the jurisdiction and allocating authority of the Commission will be retained over positions in departmental offices transferred to locations outside of the District of Columbia.

The following quotation from this decision is of special interest:

In view of the history and development of the classification legislation, I concur in the view expressed in your letter to the effect that the words "in the District of Columbia" appearing in the original classification act and subsequent statutes in connection with the words "departmental service," do not limit the jurisdiction of the Civil Service Commission under the classification act to those departmental positions which are located within the geographical limits of the District of Columbia. The Congress has shown a clear purpose and intent throughout the classification legislation (1) to make the distinction between the departmental service *wherever located* and the field services *wherever located*, (2) to vest in the Civil Service Commission the final authority to approve allocations in proper grades of all departmental positions *wherever located*, and (3) to vest in the heads of the various departments and establishments the final authority to approve allocations in proper grades of all field positions *wherever located*. Of course, there are excepted such departmental and field positions as are expressly excepted by law from the classification acts, as amended. 21 Comp. Gen. 649, 653, January 8, 1942.

2. **Departmental (including decentralized departmental) service.**—Under Section 4 of the Classification Act of 1923 and Section 4 of the Brookhart Act of July 3, 1930, the Commission has final authority to allocate or reallocate a departmental position to its appropriate grade. 5 Comp. Gen, 406, December 4, 1925; 7 Comp. Gen. 820, 825, June 26, 1928; 8 Comp. Gen. 441, February 13, 1929; 9 Comp. Gen. 128, 130, September 18, 1929; 20 Comp. Gen. 451, February 14, 1941. This authority is not dependent on whether action is initiated by a department, an employee, or by the Commission itself. In the departmental service, the Classification Act vests in the Civil Service Commission the final authority to allocate a position in the proper grade and there is no authority for an administrative office to ignore the Commission's action and, without resorting to the established appeal procedure, to increase an employee's salary to a rate in excess of the maximum rate for the grade in which his position was allocated by the Commission. 20 Comp. Gen. 451, February 14, 1941.

Section 4 of the original Classification Act of 1923, provides—

"That after consultation with the Board and in acccordance with a uniform procedure prescribed by it, the head of each department shall allocate all positions in his department in the District of Columbia to their appropriate grades in the compensation schedules and shall fix the rate of compensation of each employee thereunder, in accordance with the rules prescribed in Section 6 herein. Such allocations shall be reviewed and may be revised by the Board and shall become final upon their approval by said Board." Section 4, Classification Act of March 4, 1923.

Concerning this section, the Attorney General has said:

"There can be no difference of opinion as to the purport of this section. Its meaning is clear. The Personnel Classification Board is the final authority to review and revise, and therefore to determine, allocations." 34 Op Atty. Gen. 118, 120, March 10, 1924.

Section 4, Brookhart Act of July 3, 1930, provides that—

"The Personnel Classification Board shall have authority to ascertain currently the facts as to the duties and responsibilities of any such position and to review and, subject to the President's approval, to change the allocation thereof whenever, in its opinion, the facts warrant: *Provided*, That such review and change shall be made only after consultation with the heads of the departments concerned and after affording all incumbents of positions affected an opportunity to be heard, of which hearing a permanent written record shall be made and kept, including all testimony taken: *Provided further*, That in all cases where the Board shall change the allocation of a position to a lower grade the rate of pay fixed for such position prior to such change may be continued so long as the position is held by the incumbent then occupying it."

Executive Order No. 5473, October 30, 1930, establishing the procedure for Presidential approval or disapproval under Section 4 of the Brookhart Act, reads in part as follows:

"Now, therefore, whenever in accordance with the provisions of the foregoing law, the Personnel Classification Board on its own initiative shall review and change the existing allocation of a position, such change is approved to take effect 30 days from the date when the notice of the change is received by the department concerned unless the head of the department shall file with the Personnel Classification Board within that period, a protest against the change. If a protest is filed by the head of a department, the Personnel Classification

Board shall promptly transmit such protest to the President, with a statement of its reasons for the change of allocation, and such protested change shall not become effective unless and until approved by the President."

The effect of Section 4 of the Brookhart Act, quoted above, is to make it clear that the Civil Service Commission has the authority to review allocations on its own motion and change them whenever the facts warrant. Historically, the section was enacted to modify certain decisions of the Comptroller General in which this authority (on the part of the former Personnel Classification Board) had been questioned, and to restore the effect of earlier decisions, such as the following:

Under the generally recognized principle that a Government officer, or, as in this case, a Government board, may review its own action for the purpose of correcting a mistake, the Personnel Classification Board is authorized to review any allocation erroneously made at any time. 4 Comp Gen. 280–281, September 8, 1924.

"In your case the position which you now hold was evidently allocated as of July 1, 1924, by the Classification Board to CAF–2 and whether or not such allocation to that grade was erroneous was a question for the consideration of the board upon appeal by the person holding the position or by the administrative office in which the position existed or on motion of the board upon discovery of the error." * * * When the board determines the classification of a particular position said position remains in the grade in which placed by the board until subsequently reallocated by the board as authorized by law. A–15529, October 5, 1926.

For limitations on the applicability of the hearing procedure and salary-saving clause contained in Section 4 of the Brookhart Act, see Section VI–E herein.

In one unusual type of case, described in the following syllabus, the allocation authority of the Commission is apparently restricted where a reallocation would be inconsistent with the terms of a Presidential appointment confirmed by the Senate.

"Where the recommendation for appointment, the nomination by the President, or the commission issued pursuant thereto as an expert under the Social Security Board, with salary rate of $5,000 or more per annum pursuant to the proviso to the act of June 28, 1937, 50 Stat. 344, specifies a particular grade or any salary rate therein, there is no authority for the Board, with the approval of the Civil Service Commission, to allocate the position in a higher grade or for payment of any salary in excess of the maximum salary rate of the grade to which the Presidential appointment is made." 17 Comp. Gen. 474, December 6, 1937.

3. **Field Service.**—In the field service as already indicated (Section I–B–2) all positions are subject to the Classification Act of 1923, as amended, unless expressly exempted. Originally the legal responsibility for the final allocation of field positions without restriction was placed in the heads of departments (10 Comp. Gen. 519, 521, May 12, 1931), although the Commission frequently participated in this activity on an advisory or consulting basis. Recent developments, however, have given the Commission a greater measure of administrative responsibility to establish allocation standards, render advice on, and make post audits of field allocations. The final legal responsibility of

allocating field positions has not, however, been transferred from the departments and agencies to the Commission.

The major responsibility in this direction is that given to the Commission in Executive Order 9512 of January 16, 1945. This order directs the Commission to prepare and publish standards for the allocation of field positions subject to the Classification Act, and directs the departments and agencies to comply with these standards in allocating such field positions. The Commission is required to investigate the degree to which the agencies comply with the standards in allocating their field positions, and is authorized to report non-compliance by any department or agency to the President, through the Liaison Officer for Personnel Management.

More detailed information on the allocation standards issued by the Commission under Executive Order 9512 may be found in the Federal Personnel Manual, pages P2–19 and P2–20.

B. FINDINGS OF FACT

Generally speaking, the Civil Service Commission is authorized to decide finally what the facts are in regard to the duties and responsibilities of positions. 4 Comp. Gen. 959, May 20, 1925; A–15529, October 5, 1926. For example, an allocated vacancy (CAF–8) did not develop as anticipated, but no change was made during incumbency of its first occupant. A second employee was viced into the vacancy in CAF–8. The Personnel Classification Board found that neither incumbent had performed the duties of the position as originally set up and lowered the allocation to CAF–6, in which action the department concurred.

The employee appealed to the Comptroller General contending that the duties and responsibilities of the position to which he was promoted were the same as performed by the former incumbent who enjoyed CAF–8. The Comptroller General stated:

" * * * all questions of fact involving a proper description of duties and responsibilities of positions subject to the Classification Act are for consideration and determination among the employee concerned, the administrative office, and the Personnel Classificaton Board and not by this office. Where there is a difference of opinion as to the duties and responsibilities of a position between the employee on the one hand, and the administrative office together with the Personnel Classification Board on the other, the final determination by the latter must control in fixing the salary grade of the position." 8 Comp. Gen. 441, 443, February 13, 1929.

In particular, the Commission is authorized to decide whether the duties and responsibilities of a position are such as to make it "additional identical" to another position within the meaning of 9 Comp. Gen. 101, September 3, 1929. "The administrative finding that a position is 'additional' rather than 'new,' is not necessarily conclusive, but involves a question of facts, for ascertainment by the Civil Service Commission, as to whether the responsibilities,

as well as the duties, of the position are practically identical with those of the position or positions on the basis of which the administrative office had fixed the compensation thereof." 15 Comp. Gen. 6, July 2, 1935.

C. CREATION OF ADDITIONAL SERVICES AND GRADES

The Commission does not have the authority to establish additional classification services or grades. At one time the Personnel Classification Board attempted to set up a "Miscellaneous Service" to cover positions which were not fairly and reasonably allocable within the existing services and grades. For such positions the Board was authorized, by Section 4 of the Classification Act, to adopt for each such position "the range of compensation prescribed for a grade, or a class thereof, comparable therewith as to qualifications and duties." This, however, did not authorize the Board to establish a Miscellaneous Service with grades selected from the other services. All "Section 4 allocations" had to be made to an existing service and grade and the allocation so symbolized, e.g., copper plate map engravers, P–3. 10 Comp. Gen. 47, July 31, 1930; id., 284, December 27, 1930; id., 344, February 5, 1931.

However, the President, upon report and recommendation by the Commission, has the authority to establish additional classification services under Section 3 (b), Title II, of the Ramspeck Act of November 26, 1940, which reads as follows:

> Whenever the President, upon report and recommendation by the Commission, shall find and declare that one or more officers or positions to which the Classification Act of 1923, as amended and extended, is applicable, may not fairly and reasonably be allocated to the professional and scientific service, the subprofessional service, the clerical, administrative, and fiscal service, the custodial service, or the clerical-mechanical service, as described in the Classification Act of 1923, as amended, he may by Executive order prescribe and define such additional classification services and grades thereof as he may deem necessary and shall describe, and fix the ranges of compensation for, the grades of such services within the limits of the Classification Act of 1923, as amended, so that they shall be comparable, as nearly as may be, with the grades in said Act, as amended, for offices or positions that are comparable as to duties, responsibilities, qualifications required, and other conditions of employment.

D. CHANGES IN SALARY RANGES

The Commission is not authorized either (a) to revise the pay scales of the Classification Act or (b) to establish for any class of positions a pay scale which is different from that of the grade in which the class is allocated, except in the limited types of cases and to the limited degree authorized by section 401 of the Federal Employees Pay Act of 1945 (the last paragraph of section 3 of the Classification Act of 1923, as amended).

That the Congress did not intend to invest the Board with any authority to make changes in rates or ranges of compensation, but

intended that with respect to such matters the Board should only submit its recommendations to the Congress for consideration as to whether there should be any changes in the law, is indicated by Section 12 of the Classification Act. A-27506, June 29, 1929. This Section provides:

> That it shall be the duty of the Board to make a study of the rates of compensation provided in this act for the various services and grades with a view to any readjustment deemed by said Board to be just and reasonable. Said Board shall, after such study and at such subsequent times as it may deem necessary, report its conclusions to Congress with any recommendations it may deem advisable.

At one time it was thought that the authority granted in Section 3 of the Classification Act to "provide * * * subdivisions of the grades" meant the power to subdivide salary ranges. However, this is not the case. The "subdivisions of the grades" are classes of positions, not series of salary rates. In 34 Op. Atty. Gen. 98, February 1, 1924, the Attorney General held that Section 13 of the Classification Act "indicates an intention on the part of Congress to make the range of compensation of the grades coterminous with that of the classes thereof" and that "classes must carry a range of compensation identical with that of the grade in which said classes belong." This interpretation has been confirmed by the Comptroller General, who has stated:

> "It was early held that the words 'grade' and 'class' as used in the Classification Act of 1923, and the average provision with relation to the salary range prescribed in the Classification Act, were synonymous, and that there was no authority to fix a different salary range for different classes of positions allocated in the same grade having a common salary range. 4 Comp. Gen. 126; *id.* 334; *id.* 493; 10 *id.* 47; *id.* 284. The legal principle involved is that the entire salary range prescribed by the act for a particular grade, rather than one or any number of salary rates less than the total prescribed for the grade, attaches to any position placed or allocated in said grade, regardless of the class of position." 14 Comp. Gen. 392, 393, November 14, 1934. See also 21 Comp. Gen. 560, December 15, 1941.

Similarly, there is no authority to combine two or more grades or salary ranges as prescribed by the Classification Act to establish one field grade or salary range. 10 Comp. Gen. 349, February 10, 1931.

Section 401 of the Federal Employees Pay Act of 1945, an amendment to section 3 of the Classification Act of 1923, as amended, authorizes the Commission to make limited exceptions to the general rules stated above. It provides that—

In subdividing any grade into classes of positions, as provided in the foregoing paragraph, the Civil Service Commission, whenever it deems such action warranted by the nature of the duties and responsibilities of a class of positions in comparison with other classes in the same grade, and in the interests of good administration, is authorized to establish for any such class a minimum rate, which shall be one of the pay rates, but not in excess of the middle rate, of that grade as set forth in section 13 of this Act, as amended.

Whenever the Commission shall find that within the same Government organization and at the same location gross inequities exist between basic per annum rates of pay fixed for any class of positions under this Act and the compensation of employees whose basic rates of pay are fixed by wage boards or similar administrative authority serving the same purpose, the Commission is hereby empowered, in order to correct or reduce such inequities, to establish as the minimum rate of pay for such class of positions any rate not in excess of the middle rate within the range of pay fixed by this Act for the grade to which such class of positions is allocated. For the purposes of this section the fourth rate of a six-rate grade shall be considered to be the middle rate of that grade. Minimum rates established under this paragraph shall be duly published by regulation and, subject to the foregoing provisions, may be revised from time to time by the Commission. The Commission shall make a report of such actions or revisions with the reasons therefor to Congress at the end of each fiscal year. Actions by the Civil Service Commission under this paragraph shall apply to both the departmental and field services and shall have the force and effect of law.

IV. ALLOCATION ACTION AS A PREREQUISITE TO PERSONNEL OR SALARY TRANSACTIONS

A. GENERAL RULE

The general rule is that when the positions concerned are under the Classification Act, they must have been allocated before final administrative action can be taken on appointments, transfers, promotions, changes in pay-grade status, or payment of salary. The reason for this rule is that the allocation determines the legal salary rate payable. This general rule is subject to two types of exceptions described later as "vice changes" and "identical additional positions."

When an employee enters a position not previously allocated, that position must be allocated before any salary can be determined and paid. 3 Comp. Gen. 1001, June 26, 1924. Ques. 13.

"The proper procedure * * * should have been that the allocation of the position * * * should have been finally settled and determined * * * before the appointment was made." Credit will not be allowed for service between date of appointment and date of final allocation of the position. 4 Comp. Gen. 827, 828, April 1, 1955, citing 4 Comp. Gen. 239, 242, August 26, 1924; 4 Comp. Gen. 743, March 9, 1925. See also 5 Comp. Gen. 202, September 16, 1925.

Positions whether full time, part time, or for time when actually employed, must be allocated by the Personnel Classification Board before salaries may be paid. A–11864, December 2, 1925.

When an entirely new position, as distinguished from an [identical] additional position, is created by an administrative office and an employee already in the service is immediately assigned thereto pending final action of the Personnel Classification Board in allocating the new position, the assignment of the employee to the duties of the new position should be considered as in the nature of a detail, his salary status remaining the same, and he is not entitled to a salary rate in the grade in which the new position is allocated until the beginning of the pay period current when notice of the allocation is received in the administrative office. 9 Comp. Gen. 128, September 18, 1929.

This rule was somewhat relaxed in the case of positions in Alaska and other extra-continental areas which had to be allocated by the Commission under Executive Order No. 8955, December 1, 1941. This order was revoked on March 15, 1943, by Executive Order No. 9314. In such instances, the Comptroller General advised against any payment, if the delay in allocation was short, until the allocation was determined. However—

Where distance and other considerations involved may delay final allocation action by the Civil Service Commission for an extended period, in order that the employees affected may not be without income for subsisting purposes, this office will not object to the fixing of a tentative salary rate by administrative action for *new* unallocated positions, as distinguished from identical additional positions, as nearly as may be administratively determined to be in the proper grade, which salary rate may be paid pending the final allocation of the Civil Service Commission, subject to proper adjustment when notice of the allocation of the position by the Civil Service Commission shall have been received in the administrative office. 21 Comp. Gen. 947, April 25, 1942.

Although the allocation of the position to be filled is a necessary prerequisite to payment of salary, such action alone is not sufficient in the case of an original appointment. The administrative action of appointment is, of course, also a prerequisite. In other words, payment of salary under an original appointment is effective from whichever of the following dates is the latest:

(a) Date of entrance on duty.
(b) Date of administrative action of appointment.
(c) Subsequent date fixed in administrative action of appointment.
(d) Date when notice of the allocation of the position is received in the administrative office. This factor is for consideration only when allocation action by the Civil Service Commission is a prerequisite to payment of salary in the particular position.

An employee entered on duty, September 1, 1940. His appointment was formally made October 14 after approval of classification sheet (allocated October 14) and clearance of temporary appointment with Civil Service Commission. The Comptroller General held that the employee could not be paid prior to date of appointment "It is a well established rule that compensation may not be paid to an employee prior to the effective date of his appointment and that an appointment may not be made retroactively effective to cover services rendered." Appointments are effective from date of acceptance and entrance on duty after the appointing power actually takes action, unless a later date is stated in the appointment, and may not be retroactive, citing 8 Comp. Gen. 582, May 3, 1929; 17 id. 323, October 11, 1937; and 18 Comp. Gen. 007, 008, June 5, 1939. 20 Comp. Gen. 267, November 19, 1940.

As to effect of oath execution requirement, see 21 Comp. Gen. 817, February 26, 1942, and decisions there cited.

B. "VICE CHANGES"

The general rule given above does not mean that the same position must be allocated each time its incumbent changes. If a position previously allocated has been vacated, and no changes in its duties or responsibilities are contemplated, a new or "vice" appointment to the position under its existing allocation may be made without prior allocation action by the Commission. In other words, the allocation of a given position is presumed to continue under a succession of incumbents, until changed by the Commission. 4 Comp. Gen. 957, 958, May 16, 1925; 6 Comp. Gen. 133, August 19, 1926; 8 Comp. Gen. 248, November 8, 1928; and 8 Comp. Gen. 522, April 4, 1929. This rule forms the basis for the procedure set forth in Departmental Circular No. 311, January 19, 1942.

C. "IDENTICAL ADDITIONAL" POSITIONS

Positions not previously allocated must be allocated by the Civil Service Commission prior to filling them and paying salary, except

in one class of cases, namely where the position is an additional position, the duties and responsibilities of which are identical with the duties and responsibilities of another allocated position. In this event, the department is authorized to allocate the position to the same service and grade and proceed to fill it and pay its incumbent, without prior allocation of the position by the Commission, but subject to post-audit.

During the first few years of classification administration, all additional positions had to be allocated before they were filled. 5 Comp. Gen. 202, 203, September 16, 1925.

In 1929, however, a distinction was made between (a) "identical additional" positions and (b) additional positions which differ from existing allocated positions, which were defined as "new" positions. "Identical additional" positions, it was held, did not require allocation action by the Personnel Classification Board.

> The function of the Personnel Classification Board has been completed, so far as identical positions are concerned, when it has finally allocated the duties of one of such identical positions. * * * New positions which the administrative offices are required by the Classification Act above quoted to report to the board for approval of allocations are those having duties and responsibilities which differ from existing allocated positions in the same bureau, office, or other appropriation unit, and care should be exercised to submit all such positions promptly for allocation. 9 Comp. Gen. 101, 102–104, September 3, 1929. See also 11 Comp. Gen. 321, February 25, 1932. 23 Comp. Gen. 743, April 1, 1944.

However, a position created specifically by statute and positions the number of which are limited by statute are not within the purview of these decisions, because they cannot be "duplicated" by administrative action. 20 Comp. Gen. 9, July 5, 1940.

Where an original position has been previously allocated by the Personnel Classification Division of the Civil Service Commission and an additional identical position is created administratively, the identification on the pay roll of the original position may be made by use of the Civil Service Commission number given to the original position. 23 Comp. Gen. 743, April 1, 1944 (9 Comp. Gen. 261 modified).

Whether one position is identical with another is a question of fact to be decided by the Civil Service Commission. 15 Comp. Gen. 6, July 2, 1935.

For the Comptroller General's decision to apply, the position must be identical with an allocated position, not merely similar or of the same value. In the Tariff Commission the chiefs of the various commodity divisions were in P–6, except two who were in P–5. The Tariff Commission asked whether it could reallocate these two administratively to P–6. The Comptroller General pointed out that the situation did not involve the creation of any "additional positions" and that the positions the employees were occupying had been

allocated to P–5 on the basis of duties and responsibilities which had not changed. He stated:

" * * * Even though it may seem that the duties and responsibilities of these two chiefs of divisions, whose positions had been regularly allocated in grade P–5, are identical in all respects with the duties and responsibilities of the other chiefs of divisions allocated in grade P–6, and however reasonable and desirous from an administrative standpoint it may appear that all of the positions of chiefs of divisions under the Tariff Commission should be allocated in the same grade, under existing law the two positions in question may not be reallocated by the action of the administrative office from grade P–5 to P–6 without the approval of the Personnel Classification Board. The decision of September 3, 1929 (9 Comp. Gen. 101) is not applicable." A–28926, October 7, 1929.

With respect to the suggestions in some of the early decisions to the effect that "vice" personnel changes and the filling of identical additional positions need not be reported to the Personnel Classification Board, it should be observed that apart from regulations under the Classification Act, the departments are required by Civil Service Rule XIII to report personnel changes, statements of duties, and so on, as the Commission may request. In this respect the Commission has a broader authority than had the Personnel Classification Board. Also, as previously indicated, the Commission, under Section 4 of the Brookhart Act, is authorized to review and revise, if necessary, the allocation of any position, whether new or identical additional, or upon a "vice" change.

The decisions, otherwise, form the basis for the procedure set forth in Departmental Circular No. 317, February 16, 1942, and Departmental Circular No. 381, October 13, 1942.

V. EFFECTIVE DATE OF SALARY CHANGES

In the departmental service, immediately after July 1, 1924, when the Classification Act of 1923 became effective, the question arose as to the date when changes in pay due to changes in allocation affecting employees already in the service would take effect. Initial allocations became effective for pay purposes on July 1, 1924. But to apply the same rule to all revised or changed allocations made thereafter, said the Comptroller General, "would result in confusion, impossibility of proper accounting, and difficulty in the application of the average provision appearing in the appropriation acts." Accordingly, he ruled that—

"Hereafter allocations may be given effect to only for the pay period current upon the date of receipt by the administrative office of the allocation, whether it be an original allocation or an allocation resulting from an appeal." 4 Comp. Gen. 280, 281, September 8, 1924.

Thus a uniform and practical accounting rule was adopted, under which an increase in compensation under an allocation or reallocation of a position in which an employee is already serving (except on formal detail), and for which he is legally qualified, is effective from the beginning of the pay period current when notice of the allocation or reallocation is received in the administrative office. To the same effect are: 4 Comp. Gen. 395, October 22, 1924; id. 721, February 26, 1925; 5 Comp. Gen. 202, September 16, 1925; 6 Comp. Gen. 202, September 23, 1926; id. 355, November 29, 1926; id. 530, February 14, 1927; 8 Comp. Gen. 40, July 28, 1928; 9 Comp. Gen. 128, September 18, 1929; 10 Comp. Gen. 284, December 27, 1930; 11 Comp. Gen. 395, April 18, 1932; 18 Comp. Gen. 794, April 17, 1939; B–36227, August 24, 1943; B–45172, October 25, 1944; 24 Comp. Gen. 816, May 14, 1945.

Reference to these decisions will show that the rule has been applied to the first allocation of positions previously occupied but not theretofore required to be allocated as well as to the reallocation of positions. 21 Comp. Gen. 947, April 25, 1942.

A position was reallocated to a grade calling for a higher salary by action of the Personnel Classification Board taken on July 14. The administrative office was notified of this reallocation on July 18. It was held that the change of salary was effective not from July 1, 1924, but from July 16, 1924. A–12800, April 21, 1926.

This rule is applicable not only to increases due to reallocations from a lower to a higher grade but also to decreases due to reallocations from a higher to a lower grade. 8 Comp. Gen. 275, November 27, 1928.

Certain terms used in this general rule have been defined:

The term "administrative office" means the particular bureau in a department on which is imposed the duty of making up the pay rolls, and not necessarily the department in which the bureau is located. 4 Comp. Gen. 721, February 26, 1925.

The term "pay period" means the entire month if employees are paid on only one pay roll a month. 6 Comp. Gen. 202, September 23, 1926; id., 355, November

20, 1926; 10 Comp. Gen. 46, July 31, 1930. It means a half-month if employees are paid on two separate and distinct pay rolls a month. 11 Comp. Gen. 395, April 18, 1932.

This rule does not apply, however, (a) where no current allocation action is necessary, as in the case of a line promotion to an allocated vacancy, or (b) where allocation action by the Commission is not essential prior to payment of salary, as in a "vice" change, or a promotion to an identical additional position, or (c) where the employee is on formal detail to the position under 5 U. S. C. 38 and such detail has not yet been terminated. In such cases, there is applicable the general rule that the effective date of salary changes resulting from administrative action exclusively is the date the action is taken by the administrative officer vested with the proper authority, or a subsequent date specifically fixed. It cannot be made retroactive. 4 Comp. Gen. 957, May 16, 1925; 6 Comp. Gen. 133, August 19, 1926; 8 Comp. Gen. 275, 277, November 27, 1928; 10 Comp. Gen. 514, May 9, 1931; 11 Comp. Gen. 115, 118, September 28, 1931; 21 Comp. Gen. 95, 96, August 1, 1941. This is true even where the promotion is a restoration of the employee to his former grade and salary after the employee had been demoted in grade and salary in a reduction of force program on the basis of a "Fair" efficiency rating, which was subsequently changed to "Good" by the statutory efficiency rating board of review. The regulations of the Commission, Section 403, Departmental Circular No. 265 (Revised), provide for restoration of grade and salary, based on a correction of efficiency rating as the result of appeal to a board of review, "in so far as possible under the law and regulations and in the public interest". 23 Comp. Gen. 486, January 4, 1944.

In case of a formal detail under 5 U. S. C. 38, the employee's salary cannot be changed until such detail is terminated and the employee administratively appointed or promoted to the position involved. B–35161, June 30, 1943. 23 Comp. Gen. 145, August 28, 1943; 24 Comp. Gen. 518, January 12, 1945; *id.* 563, January 27, 1945; *id.* 816, May 14, 1945.

The rule stated in 4 Comp. Gen. 280, 281, does not apply to allocations or reallocations made by the agencies in the field service in cases where the Commission issues no "notice of reallocation" and the action of only one agency, the department, is involved. 6 Comp. Gen. 758, May 21, 1927; 11 Comp. Gen. 115, September 28, 1931. In such cases the date of administrative action on the personnel change is the earliest possible effective date.

"In salary changes involving the action by two separate and distinct agencies of the Government, such as the administrative office and the Personnel Classification Board, there being involved merely the fixing of the rate of compensation for the position actually held, rather than the effective date of an appointment or promotion to a position, there was need of a uniform and practical accounting rule fixing an effective date, as fair as possible both to the employees and to

the Government. However, the effective date of salary changes that are dependent only upon the action of the administrative officer vested with authority to make the appointment or promotion is for determination now by the same rule that applied to such changes before the Classification Act became effective." 10 Comp. Gen. 514, 518, May 9, 1931.

"* * * It is a well-established rule that, in the absence of a statute specifically so providing, administrative changes in salary rates may not be made retroactively effective. The Classification Act justified or authorized no different rule in this respect. The rule is applicable to all salary adjustments involving exclusively the action of the administrative office, whether in the departmental or field service. 10 Comp. Gen. 514. * * * It is suggested if a uniform date is desired, other than the date of administrative approval, for the effective date for pay purposes of all allocations and reallocations of field service positions, that the first of the month following the month in which the administrative action is taken be adopted." 11 Comp. Gen. 115, 118, September 28, 1931.

A succinct statement of the rules for determining the effective date of the reallocation of a position is given in 22 Comp. Gen. 526, 528, December 8, 1942, as follows:

In the departmental service, involving action both by the administrative office and by the Civil Service Commission, the change in salary upon reallocation of the position is effective at the beginning of the pay period current when notice of the reallocation is received in the administrative office. 4 Comp. Gen. 280, 721; 6 id. 202, 355, 530; 11 id. 395. In the field service, involving action by the administrative office only, the increase in compensation is to be regarded as an administrative promotion and, as such, would be effective on the date of approval by the proper administrative office, or at such later date as might be administratively fixed. 6 Comp. Gen. 758; 10 id. 514; 11 id. 115.

A position in P–4 gradually developed into a new and different position. A reallocation notice to P-5 was received by department, March 4, 1938. The employee had been performing work of new position for some time, but due to contemplated reorganization changes, the department did not put the new allocation into effect. The employee was entitled to the difference between the minimum of P–5 and her actual pay, back to March 1, 1938. This decision follows the rule that an original allocation of a new position—as distinguished from an administrative promotion to an additional position—in which an employee is already serving, as well as the reallocation of an existing position, is effective from the first of the month or the beginning of the pay period current when notice of the allocation was received in the administrative office. 18 Comp. Gen. 794, April 17, 1939.

However, "the fixing of a salary rate in accordance with the action of the Civil Service Commission may be delayed where an appeal is taken immediately (see 9 Comp. Gen. 325)." 20 Comp. Gen. 451, 455, February 14, 1941. That is, where the action of the Commission in reallocating a position to a higher grade is not final, but further consideration to the matter is given immediately on request of the department, no adjustment in the salary rate of the position is required pending final action.

For example, an employee in P–3 appealed for P–6. The Personnel Classification Board allocated the position to P–5 and notified the administrative office which immediately protested the action of the board and requested further consideration of the case. The board granted this request for further consideration. The Comptroller General held that the pay status of the employee should remain unchanged until final action. 9 Comp. Gen. 325, January 30, 1930.

Where the work of a new position (not an identical additional position) is already being performed by an employee not on formal detail,

or where the employee's present position is reallocated, and in either case the employee has qualified for the personnel change and the department keeps the employee in the position concerned, it should make any change in pay effective at the beginning of the pay period when notice of allocation or reallocation is received in the administrative office. There is no general authority to delay administrative action.

An employee in CAF–6 was assigned on April 21 to part of the duties of an existing allocated vacancy and the new sheet covering this assignment was allocated to CAF–7, notice being received on June 2. The employee was then formally appointed to such position on June 3, effective beginning with the current pay period. The Comptroller General held that this action was proper. "There was involved the creation of a new position and the detail or assignment thereto of Mr. Stewart pending action by the Personnel Classification Board in allocating the new position. Even though the formal administrative appointment to the new position was dated June 3, 1930, the next day after the administrative office received notice of the allocation, it was proper, where the employee had been performing the duties of the new position from a date prior to the first of the month, to apply the general rule and consider the effective date of the allocation for pay purposes as the first of the month or the beginning of the pay period when notice of the allocation was received in the administrative office." 10 Comp. Gen. 284, 287–288, December 27, 1930.

The foregoing general rule and discussion are based on situations where the employee otherwise is qualified and has an appropriate legal status under civil-service regulations to entitle him to occupy and receive the appropriate salary of the allocated or reallocated position. If this is not the case, the rule does not apply.

The civil service laws and regulations, having to do with appointments, and the Classification Act of 1923, having to do with salary rates, are separate and distinct statutes with different scopes and purposes. 17 Comp. Gen. 578; 18 *id.* 223; *id.* 796. The classification of a position pursuant to the Classification Act of March 4, 1923, 42 Stat. 1488, is not a classification of the employee who may be doing the work of the position thus classified. On the contrary, the classification relates only to the work or position itself and determines the proper compensation to be paid for that work to a person qualified to hold such a position. When the present incumbent of a reclassified position has the necessary qualifications for that position the compensation would be payable from the beginning of the pay period current when the notice of the classification is received in the administrative office, irrespective of when the qualification of the incumbent is determined by the Civil Service Commission, but, in no case, however, prior to the date the employee actually attained the necessary qualifications.

However, there is no authority to pay the compensation of the reclassified or newly allocated position to a person who is not qualified to hold that position. If compensation attached to the reclassified or newly allocated position has been paid prior to determination by the Civil Service Commission of the employee's qualification for that position and the employee is found by the Commission to be not qualified to hold that position, the excess over the compensation of the classified position formerly occupied by the individual and for which he or she was qualified would be for refunding. B–11071, July 11, 1940.

The same distinction between the allocation of a position and the qualification of an employee is drawn in 24 Comp. Gen. 518, January 12, 1945. This decision dealt with the relationship of the Commission's promotion regulations under Departmental Circular No. 257, Revision No. 3, as amended, to the pay requirements of the Classifica-

tion Act of 1923, as amended. The circumstances and the principal points of the decision were as follows:

1. An increase in the value of duties and responsibilities, assigned to an employee receiving $4600 per annum in grade CAF–12 had the effect of creating a new position, which was allocated in CAF–13. The employee's former position in CAF–12 was abolished.

2. The employee did not meet the time requirements of Departmental Circular No. 257, Revision No. 3, as amended. Hence, the Commission disapproved his promotion to the CAF–13 position, stating that the employee could continue on his work-assignment by "detailing" him to the position and that for payroll purposes he should continue to be paid in CAF–12.

3. The department contended that since the position had been allocated to grade CAF–13, the rates of that grade (minimum $5600 per annum) were the only rates legally payable.

4. A summary of the Comptroller General's decision follows:

a. The Civil Service Commission has the authority, pursuant to law, to require an employee to serve a fixed minimum length of time at a particular grade level to *qualify* him to occupy a position allocated under the Classification Act.

b. In previous Comptroller General's decisions relating to effective date and amount of salary changes incident to the operations of the Classification Act, "it was assumed that the incumbent otherwise was qualified and had an appropriate legal status under the Civil Service Rules to entitle him to occupy the allocated or reallocated position".

c. These decisions do not apply to any case where the incumbent has not met the minimum eligibility requirements prescribed in Departmental Circular No. 257, Revision No. 3, as amended. There is no authority to pay the compensation of a reclassified or newly allocated position to a person who is not legally qualified to hold that position.

d. In the case covered by the decision, the employee is to be regarded as "remaining *in status quo* as on detail until he qualifies for the salary rate of the higher grade".

e. When he qualifies, "the increase in compensation does not become automatically effective, either retroactive or prospective, but there must be administrative action terminating the detail and promoting the employee to become effective on or after the date the employee meets the minimum service eligibility requirements of the Commission, provided the employee otherwise has been determined to be eligible to occupy the position in the higher grade."

This decision illustrates the sound distinction between a *promotion* under the Civil Service Act and regulations, which deals with the qualifications and status of an *employee*, and an *allocation* under the Classification Act of 1923, which deals with the duties and responsibilities of a *position*. An employee's legal right to a promotion must be established under the Civil Service Act and regulations and is not established by allocating his position to a higher grade under the Classification Act.

There is no authority of law for promotion of employees from grade to grade under the Classification Act based upon seniority, such promotions being made by selection of individual employees. 24 Comp. Gen. 720, April 9, 1945.

If a definite commitment has been made by an authorized administrative officer to appoint, not detail, an employee to a new position prior to its allocation, a definite acceptance being made by the employee—notwithstanding neither party was in a position to be assured what compensation will result from the allocation of the position—and some definite written evidence being currently recorded to show the action taken, the compensation rate based on the allocation may be regarded as effective from the beginning of the pay period current when advice of the classification is received, but not prior to the date of such definite commitment and acceptance. 24 Comp. Gen. 563, distinguished. 24 Comp. Gen. 816, May 14, 1945.

VI. INITIAL PAY RATES IN PERSONNEL OR SALARY

A. MANDATORY EFFECT OF PAY SCALES

Changes in pay brought about by transactions under the Classification Act of 1923, as amended, are not affected by the national salary and wage stabilization program under the Act of October 2, 1942, Executive Order No. 9250, October 3, 1942, or the regulations of the National War Labor Board and the Commissioner of Internal Revenue, 22 Comp. Gen. 708, January 26, 1943.

A qualified incumbent of a position under the Classification Act must be paid according to the allocation of his position. Payment according to allocations is not only authorized but required, 4 Comp. Gen. 56, July 14, 1924. Such payment "is but the necessary adjustment in the legal rate of compensation." 6 Comp. Gen. 530, 531, February 14, 1927.

Employees legally qualified for their positions must not be paid less than the minimum rates of the grades in which their positions are allocated. This is a legal requirement, with which the departments must comply even if the amount of funds currently available is insufficient. "Any resulting deficit in the appropriation must otherwise be avoided." 4 Comp. Gen. 106, 107, July 24, 1924.

"Insufficiency of appropriated funds or prospect of a deficiency therein does not authorize payment of compensation for a civilian position in the District of Columbia at any other rate than one in the grades in which the positions are allocated, and there is no authority to delay paying the increase in rate of compensation pursuant to a reallocation of a position until such time as the administrative office may determine that the increase would not cause a deficiency in the appropriation. * * * and if on the basis of such payments, there is prospect of a deficiency in the appropriation involved for which the Congress will not make provision, it is the plain duty of the administrative office to provide against such deficiency by the reduction of salaries in these cases in which payment is being made at a rate in excess of the minimum rate of the grade in which the position is allocated, or by the temporary or permanent reduction of the number of employees." 6 Comp. Gen. 355, 358, November 20, 1926.

An employee may not remain below the minimum rate voluntarily in order that another may receive an increase in salary. "There would be no option with an employee if the duties of his position are properly allocated to a higher grade." 3 Comp. Gen. 1001, 1005, June 26, 1924.

However, an employee not legally qualified for his position or grade is not entitled to the same benefits as those legally qualified and properly appointed or promoted. A retired warrant officer receiving retirement pay was appointed to a position in CAF–6 at $2,300. This was not in violation of the dual compensation statute of July 31, 1894, 5 U. S. C. 62. The position, however, was reallocated to CAF–7 and he was accordingly paid $2,600. This

tion of the dual compensation statute. The Comptroller General ruled that the reallocation of the *position* was not thereby voided; that the warrant officer could not legally hold the CAF-7 position; and that he had to refund the entire amount of salary paid him in CAF-7 since the reallocation.

"The reclassification or reallocation of a position based upon the duties and responsibilities thereof, which is finally consummated [Cf. 21 Comp. Gen. 38, 39, July 16, 1941], may not be regarded as void simply because of the fact that the incumbent of the position happens to be a retired warrant officer of the Army who * * * would be prohibited by operation of the 1894 statute from *holding* the position at the higher salary rate after reallocation." 23 Comp. Gen. 445, 446, December 16, 1943.

Section 3679, Revised Statutes, as amended by the Act of February 27, 1906, 34 Stat. 49, U. S. Code, Title 31, sec. 665, prohibits any department or officer of the Government from accepting "voluntary service for the Government * * * except in cases of sudden emergency involving the loss of human life or the destruction of property." Voluntary service, under this statute, is service furnished on the initiative of private persons rendering such service, without request from, or agreement with, the United States therefor, and without authority of law. The statute does not refer to "gratuitous" services furnished under a formal contract, or to the performance of additional service by a Government employee without additional compensation. Arrangements for gratuitous service are permissible, except in constitutional offices where the incumbent, by virtue of his title to the office, has a legal right to compensation. 27 Comp. Dec. 131, August 6, 1920; 3 Comp. Gen. 117, September 5, 1923; 4 Comp. Gen. 967, May 21 1925; 7 Comp. Gen. 810, 811, June 26, 1928; 20 Comp. Gen. 267, 269, November 19, 1940; 23 Comp. Gen. 900, May 27, 1944; 24 Comp. Gen. 314, October 20, 1944; 30 Op. Atty. Gen. 51, February 7, 1913; 30 Op. Atty. Gen. 129, 131, March 14, 1913.

There has been considerable misunderstanding regarding the proper application of that statutory provision—the practice having been adopted, it seems, of authorizing the payment of salary at the rate of $1 per annum in order to prevent a violation of said statute. Such a practice is unnecessary unless some other statute or appropriation act requires the payment of $1 per annum. 23 Comp. Gen. 900, May 27, 1944.

In line with this decision, the President on June 19, 1945, issued a memorandum to the Heads of Executive Departments and Agencies stating:

Under the provisions of the First Supplemental National Defense Appropriation Act of 1941, employment of persons at a compensation rate of $1.00 per annum, with my approval, is permissible notwithstanding the provisions of existing law.

Since the compensation rate is purely nominal, the persons serving on this basis are to all intents and purposes serving without compensation. The elimination of dollar per annum or per month appointments will simplify personnel record-keeping and reporting in the agencies and to the Civil Service Commission and the Bureau of the Budget. Accordingly, such appointments

ported by a written agreement that the person so serving waives any and all claims against the government on account of such service. In the future, no additional appointments shall be made on a dollar per annum or per month basis.

If through clerical error the employee is not paid at least the minimum rate of the grade to which his position was actually allocated, he is entitled to the difference in back pay on discovery and correction of the error.

An employee occupying position of Law Examiner, SP–7, was promoted to an assistant attorney position which was allocated to P–2 and the department notified June 19, 1924. The SP–7 vacancy was reallocated by correction of the allocation to P–1 and department notified June 30, 1924. The department got the two certificates confused and continued to pay the employee in P–1 until July 1, 1925. Held, that the employee was entitled to the difference between his actual pay and minimum of P–2 for period from July 1, 1924, to June 30, 1925 Syllabus: Where the report of the Personnel Classification Board to the administrative office giving the grade to which the position of an employee had been allocated was either erroneous or misunderstood by the administrative office and resulted in payment to the employee of compensation at a rate in a lower grade than that to which the employee's position had actually been allocated, the employee is entitled, for the entire period involved, to the difference in pay between the amount actually received and the proper salary rate in the grade to which the position was actually allocated as shown by a corrected report of the Personnel Classification Board. 5 Comp. Gen. 406, December 4, 1925.

Incidentally, it should be noted that a clerical error, indicating a grade higher than that to which the position was in fact allocated, does not create a legal right to the increased compensation. For example, a CAF–5 position was made the subject of appeal for CAF–6. The formal notice of the result read "CAF–6" under the heading "Allocation approved," but the notice also described the action as "Denied." The department regarded the notice as approval and paid the employee accordingly. On discovery of the error, a refund was required of the amount to which the employee was not entitled. A–51770, November 1, 1933.

Payment of salary must be made at one of the specified rates in the grade; non-standard rates falling between the minimum and maximum are not permissible. A–17552, March 4, 1927.

Also, employees must not be paid more than the maximum rates of the grades in which their positions are allocated. 20 Comp. Gen. 451, 455, February 14, 1941. Section 7 of the Classification Act expressly prohibits increasing salaries above the maximum rates of the grades. Exceptions in individual cases may occur under Section 4 of the Brookhart Act of July 3, 1930, when, after an allocation is lowered on the initiative of the Commission, the department head decides to preserve the existing salary of the employee, even though above the maximum rate of the new grade.

In the field service, payment according to administrative allocations is likewise required.

A field position had been administratively allocated to CAF–1, but the employee was appointed thereto at $1,200 per annum. The Comptroller held that he should have been paid $1,260, saying: "A field grade or salary range corresponding to a grade or salary range prescribed by the Classification Act, as amended, established under the rules and regulations of an administrative office, and the placement or allocation of a position therein by administrative action, is as controlling of the salary rate of an employee as the allocation of the position, upon the final approval of the Personnel Classification Board, in a certain grade under the departmental service, and a salary rate, at least the minimum in the range prescribed for the particular grade in which a position has been placed or allocated, must be paid." 10 Comp. Gen. 265, December 11, 1930.

The salary rate for a field position was increased within the grade from $3,000 to $3,300. The employee declined to accept the increase in salary but the administrative action was not cancelled. Later he filed a claim for the difference between the amount actually received and the amount of compensation so fixed. The claim was approved for payment. The Comptroller held that when the administrative office changes an employee's salary rate within the grade or salary range "the new rate becomes the only lawful rate for that particular position and no acceptance or other action by the employee is necessary to put such new rate into effect. A salary rate thus administratively fixed may be changed only by authorized administrative action and not by any objection or rejection by the employee." The Comptroller pointed out that if an employee does not, for personal reasons, wish to retain the whole amount which the law provides he shall be paid, he is free to remit back to the United States such amount as he does not wish to retain and this action is substantially a gift to the United States, going into the general funds of the Treasury without being subject to future claims for unpaid salary. 10 Comp. Gen. 178, October 20, 1930.

Salaries of positions in the field service subject to administrative allocation to the services and grades of the Classification Act are limited to the maximum salary specified in such Act. 4 Comp. Gen. 1077, June 30, 1925; 5 Comp. Gen. 73, July 29, 1925; 5 Comp. Gen. 231, October 5, 1925; 7 Comp. Gen. 213, September 16, 1927; A–44245, January 6, 1933.

The provisions of Section 2 of the Brookhart Act do not, however, repeal existing authority for "geographic salary differentials" for service outside the States of the United States and the District of Columbia.

The effect of the statutes extending the principles of classification to the field service is a regulating by the Congress of compensation rates of Panama Canal employees in the Canal Zone within the meaning of the act of August 24, 1912,

supra, and as provided by that statute, the compensation of such employees is no longer authorized to be fixed by the President. There is, however, nothing in any of the statutes extending the principles of classification to the field service, which would preclude the continued recognition of the long-existing differential in salary rates in favor of positions in the Canal Zone, not to exceed the maximum differential fixed by the act of 1912, *supra*, at 25 percent higher than the rates paid for the same or similar services to persons employed by the Government in the continental United States. See decision of August 7, 1925, A-9082, to the Postmaster General, authorizing postal employees for the Panama Canal to be paid 25 percent more than the rates fixed by the postal reclassification act of February 28, 1925, 43 Stat. 1053, for the same or similar positions in the continental United States. 10 Comp. Gen 519, 520, May 12, 1931.

See also 21 Comp Gen. 205, September 6, 1941; 21 Comp. Gen. 369, 377, October 27, 1941; 22 Comp. Gen. 432, November 3, 1942.

The most recent ruling on geographic salary differentials is as follows:

In adjusting, pursuant to the Brookhart Salary Act of July 3, 1930, the compensation of civilian field service positions in the territories and insular possessions of the United States and in foreign countries to the grades and compensation schedules of the Classification Act of 1923, as amended, it is within administrative discretion, if it be determined to be otherwise impracticable to recruit personnel for such positions, to fix a salary differential of not to exceed 25 percent of the salary rate authorized to be fixed for the same or similar positions in the States and the District of Columbia.

The salary differential—of not to exceed 25 percent of the salary rate authorized to be fixed for the same or similar position in the States and the District of Columbia—which may be administratively fixed in adjusting, pursuant to the Brookhart Salary Act of July 3, 1930, the grades and compensation schedules of civilian field service positions in the territories and insular possessions of the United States and in foreign countries is not required to be based on the minimum salary rate of the grade in which the position is allocated, but may be based on any salary rate of such grade to which the particular employee is properly entitled. 22 Comp. Gen. 491, November 23, 1942.

The general plan for geographic differentials under the Classification Act which appears in Civil Service Commission Departmental Circular No. 394, Supplement No. 2, January 16, 1943, is based on the foregoing decision.

The question has occasionally arisen whether in the field service within the continental United States the uniform scales of pay specified in the Classification Act of 1923, as amended, must be followed by the departments or, on the other hand, whether they may be ignored or varied from locality to locality on the basis of comparison with prevailing salaries in business and industry.

A remark of the Comptroller General in one decision indicated that *allocations* might be varied from place to place on the basis of prevailing wage scales.

"* * * The grade and salary rate of a field position, subject to principles of classification, should be determined primarily on the basis of the duties and responsibilities of the position. *While it may not be improper to consider, as a factor in fixing the grade and salary of a field position, the locality where the duties are to be performed and the prevailing wage scale in private employment in that locality, possibly resulting under certain conditions in establishing different grades for positions with the same duties and responsibilities in different localities of the country*, there is no authority under the classification act as extended to the field, or under the above-quoted statute, for establishing two separate and distinct salary rates for the same position, to be paid at the home station and while on field duty, the difference representing the value of allowances furnished

in kind while on field duty. There should be established one grade and salary rate for the position occupied by the employee regardless of where the duties of the position are to be performed. * * *" 11 Comp. Gen. 25, 26–27, July 24, 1931.

However, the italicized remark cannot be construed as a definite ruling on the point, particularly because the Classification Act requires in Section 4, that "in determining the rate of compensation which an employee shall receive, the principle of equal compensation for equal work irrespective of sex shall be followed."

As a matter of fact, later decisions have dealt with this point expressly in answer to contentions raised by departments that prevailing wage scales should be taken into consideration. The Comptroller General then ruled that allocations of field positions to grades are to be made by comparison with the grades of the same or similar positions in the departmental service and that the uniform salary schedules may not be varied by reference to local prevailing wage rates in business and industry. For example: "* * * there is no statute which * * * authorizes the War Department, since July 3, 1930, effective date of the Brookhart Salary Act, to fix salary rates for such field employees solely by comparison with commercial rates in the particular locality where the duties are required to be performed." 11 Comp. Gen. 177, 180, November 12, 1931. See also 9 Comp. Gen. 229, 231, December 2, 1929; 14 Comp. Gen. 420, November 27, 1934; and the discussion in Section I–B.

In 1937 the U. S. Housing Authority advised the Comptroller General that unless positions under Federal control on field housing projects could be paid at local prevailing rates, its effectiveness in setting up local projects and transferring them to local housing authorities would be materially and prejudicially affected. The Comptroller General replied: "There is no authority in this office to ignore by statutory construction the plain mandate of the Congress fixing a standard of salary rates." A–90494, December 22, 1937.

Compare the provisions of Section 3 (c), Title II of the Ramspeck Act of November 26, 1940:

Whenever the President, upon report and recommendation by the Commission, shall find and declare that the rates of the compensation schedules of the Classification Act of 1923, as amended, are inadequate for any offices or positions under such Act, as amended and extended, he may by Executive order establish necessary schedules of differentials in the rates prescribed in such compensation schedules, but the differentials in the compensation of any such office or position shall not exceed 25 per centum of the minimum rate of the grade to which such office or position is allocated under such compensation schedules: *Provided*, That the provisions of this subsection shall be applicable only to such offices or positions having the following characteristics:

Offices or positions which are located at stations that are isolated, remote, or inaccessible when compared with stations at which offices or positions of the same character are usually located, or which involve physical hardships or hazards that are excessive when compared with those usually involved in offices or positions of the same character, or which are located outside the States of the United States and the District of Columbia: *Provided further*, That nothing therein contained shall preclude the Commission from taking the factor of isolation, hardship, hazard, or foreign service into consideration in allocating a

given class of offices or positions to a service and grade under the Classification Act of 1923, as amended, if such factor is uniformly involved in each office or position in the class, in which event no differential is authorized under this section.

B. NEW APPOINTMENTS

Rule 6 of Section 6 of the Classification Act provides that "all new appointments shall be made at the minimum rate of the appropriate grade or class thereof." Transfers, promotions, demotions, and reinstatements are not "new appointments" within the meaning of this rule. See Section VI–C, D herein.

"The evident purpose of the requirement made by Congress in the Classification Act that new appointments must be at the minimum salary rate of the grade was the protection of the employees already in the grade." 4 Comp. Gen. 493, 495, November 29, 1924.

An employee was given an original appointment to a CAF–5 position at a salary rate of $2,400, although the minimum rate of the grade is $2,000. The Comptroller General disallowed credit for payments made in excess of the minimum rate. 18 Comp. Gen. 223, September 6, 1938.

The requirement that all new appointments be made at the minimum rate of the grade applies to temporary as well as permanent appointments. "Rule 6 does not mean that only the first appointment given an employee under civil service rules and regulations is required to be at the minimum rate, but that any new appointment, regardless of the temporary or permanent character thereof, must be at the minimum rate of the appropriate grade or class. No other construction is possible under the terms of the rule. The permanent appointment of an employee serving a temporary appointment is a new appointment and must be at the minimum rate of the appropriate grade or class; also a second temporary appointment of an employee must be at the minimum rate of the appropriate grade or class." 4 Comp. Gen. 54, 55, July 14, 1924.

In the field service, it was at first held that since the general terms of the Classification Act had not been extended to the field service, new appointments need not be made at the minimum rate of the grade. 5 Comp. Gen. 302, October 30, 1925. However, this decision was reversed and its reversal confirmed in A–55251, May 10, 1934; 14 Comp. Gen. 183, August 31, 1934; 14 Comp. Gen. 392, November 14, 1934; 15 Comp. Gen. 154, August 29, 1935; 16 Comp. Gen. 1107, June 24, 1937.

"Based on the words 'authorized and directed' this requirement [Sec. 2 of the Brookhart Act] to adjust salary rates in the field service to correspond with salary rates fixed in the District of Columbia under the Classification Act, so far as may be practicable, was held to be mandatory. 10 Comp. Gen. 20. There exists no reasonable basis now on which it may be held generally, or in individual cases, to be impracticable to fix the initial salary rates of new appointees in the field service at the minimum salary rate of the appropriate grade as required by Rule 6 of Section 6 of the original Classification Act. There is no authority or justification for any difference in the rule in this respect between

the departmental service and the field service, and therefore, the rule quoted above from question and answer 5, decision October 30, 1925, 5 Comp. Gen. 302, 305, is no longer for application." 14 Comp. Gen. 183, 184–185, August 31, 1934; 14 Comp. Gen. 392, 393, November 14, 1934.

C. TRANSFERS, PROMOTIONS, AND DEMOTIONS

1. Between Classification Act positions.—Transfers, promotions, or demotions are not regarded as new appointments required to be made at the minimum rate of the appropriate grade or class. 20 Comp. Gen. 626, April 11, 1941; 22 Comp. Gen. 925, March 29, 1943.

The general rule for determining the salary rate initially applicable when an employee is transferred, promoted, or demoted between Classification Act positions is that the employee may be paid initially in the grade to which transferred, promoted, or demoted, (a) without loss of salary rate paid the employee in his former position, including any periodic or especially meritorious salary advancement, provided his former salary rate is also a standard rate in the new grade, or (b) with as little loss of salary as is necessary to pay a rate prescribed for the grade to which transferred, promoted, or reduced. 19 Comp. Gen. 845, 846, April 8, 1940; 21 Comp. Gen. 791, 796, February 21, 1942; 23 Comp. Gen. 201, 202, September 18, 1943.

The application of this rule is discretionary with the agency, rather than mandatory. Unless an employee has reemployment rights under the War Service Regulations, his *vested* right is to be paid at the *minimum* rate of the grade to which he is transferred, promoted, or demoted. 24 Comp. Gen. 369, November 9, 1944.

When he has reemployment rights under the War Service Regulations he is entitled to be transferred back to his former position without loss of any within-grade salary advancements that would have accrued to him had he remained continuously in that position. See 23 Comp. Gen. 265, October 8, 1943; 23 Comp. Gen. 471, December 31, 1943; 23 Comp. Gen. 594, February 15, 1944.

These considerations and the general rule stated above are equally applicable to the determination of the rate to be paid when an employee's transfer, promotion, or demotion (retransfer) is occasioned by the absence or restoration of other employees as a result of military service. 23 Comp. Gen. 201, 202; September 18, 1943; 24 Comp. Gen. 369, November 9, 1944.

It is also a general rule that upon a promotion or transfer, an employee cannot be paid in excess of his former rate so as to effect an additional periodic salary advancement contrary to section 7 of the Classification Act, as amended. For example, if the minimum of his new grade exceeds his former rate, he cannot initially be paid more than such minimum. 22 Comp. Gen. 489, November 23. 1942, amplifying 21 Comp. Gen. 791, February 21, 1942.

However, unusual cases sometimes arise due to differences in the standard rates of two consecutive grades. For exampl[illegible]

(a) Where there is no administrative purpose to reduce the salary of an employee for inefficiency or discipline, but there is involved solely an administrative adjustment of personnel, and there is no salary rate in the lower grade identical with the salary rate received in the higher grade, the initial salary rate of an employee transferred from a higher to a lower grade may be fixed in the lower grade at the rate prescribed by the Classification Act next above that received in the higher grade. For example, an employee receiving $2,000 may be demoted at $2,040 to a lower grade which includes a $2,040 rate but not a $2,000. 20 Comp. Gen. 579, 581, March 31, 1941.

(b) Similarly, an employee promoted from CAF–4, $2,040, to CAF–5 receives initially $2,100 rather than $2,000. 6 Comp. Gen. 413, December 23, 1926; 10 Comp. Gen. 46, 47, July 31, 1930.

There is also another type of exception in which a promotion may be made between grades, from a rate in the lower grade which is below or equal to the minimum of the higher grade, to a rate above that minimum. Where an employee has earned within-grade salary advancements in a particular position and grade, from which he is reduced to a lower salary and grade through no fault of his own, as in reduction in force, it is within administrative discretion, upon restoring him later to his former position and grade, to restore him also to his previous rate. This is a modification of 21 Comp. Gen. 791, February 21, 1942, and 22 Comp. Gen. 489, November 23, 1942, and is in line with the rule for fixing initial salary rates upon reinstatement of an employee from outside the service. 24 Comp. Gen. 226, September 19, 1944.

Subject to these modifications, the general rules for determining the salary rate initially applicable when an employee is transferred, promoted, or demoted between Classification Act positions, may thus be summarized as follows:

1. If the employee's salary rate in his former position is one of the standard rates of the grade of his new position, he may be paid initially at a rate not in excess of such standard rate.
2. If his former salary rate is higher than the maximum rate of his new grade, he may be paid initially at a rate not in excess of such maximum.
3. If his former salary rate is less than the minimum rate of his new grade, he must be paid initially at such minimum rate.
4. If his former salary rate falls between two standard rates of his new grade but not at one of the standard rates, he may be paid initially at the next higher standard rate.

These general rules, however, do not apply to the transfer, from an overseas location to a mainland location of an employee whose "former salary rate" includes a geographic differential for such overseas duty. Although the differential is regarded as part of his basic compensation at the overseas location (10 Comp. Gen. 519, 521; 22 Comp. Gen. 79; *id.* 769), it is not part of the basic compensation of any position located within the continental United States. Consequently, it is not saved to the employee upon his transfer to a location within the continental United States where the differential is not payable. 24 Comp. Gen. 181, September 4, 1944.

Where there exists no administrative regulation, practice, or policy, to deny, upon transfer of employees to other positions either in the

same or different agency, the within-grade salary advancements previously attained under the Classification Act, an administrative error in transferring an employee at a salary rate which did not save such advancements to him may be corrected retroactively effective from the date of the transfer so as to save the lawful salary rate received prior to the transfer, provided there was no purpose to reduce the employee for any other reason. 24 Comp. Gen. 342, November 2, 1944.

A transfer and retransfer on paper, not involving actual changes of assignment but made for the purpose of avoiding certain statutory restrictions are not valid transactions. 7 Comp. Gen. 587, March 22, 1928.

2. **From a position outside the Classification Act to one subject thereto.**—Where an employee is transferred, promoted, or demoted from a position not under the Classification Act to one that is subject thereto, this change is not regarded as a new appointment required to be made at the minimum of the appropriate grade. The same rules usually apply as in the case of transactions between Classification Act positions, with one exception. Where the employee's former rate falls between two standard rates of the Classification Act grade to which transferred, promoted, or demoted, his initial salary is the next lower, rather than the next higher rate.

A *transfer* from a position which has not been classified under the Classification Act of 1923 to a position which falls within the purview of the Act is not to be regarded as a *new* appointment requiring the initial salary rate for the position to which transferred to be fixed at the minimum rate of the grade in which the position had been allocated, but * * * one of the salary rates above the minimum prescribed for the grade, not to exceed the salary rate paid in the unclassified position prior to transfer, may be fixed initially. 15 Comp. Gen. 102; id. 797; 16 id. 994; 17 id. 1061; 19 id. 20. Compare 18 id. 223. 19 Comp. Gen. 845, 846, April 8, 1940.

See also 22 Comp. Gen. 925, March 29, 1943; and 22 Comp. Gen. 1092, June 11, 1943, modifying 21 Comp. Gen. 886, October 28, 1941.

Accordingly, where an employee's salary rate in a position not under the Classification Act is not one of the established rates for the position to which he is transferred, his initial salary rate should not exceed the established rate next below the rate paid before the transfer. Rule 4, Section 6, of the original Classification Act, permitting payment of the rate next above an employee's existing salary, was applicable only in the initial adjustment of salary rates at the time the Classification Act went into effect, and does not apply afterwards to transfers, or reappointments, or other transactions after that date. 19 Comp. Gen. 20, July 7, 1939; 19 Comp. Gen. 845, April 8, 1940.

Examples: Laborers in the Railway Mail Service receiving $1,600 were permitted to transfer to positions in the Custodial Service of the Classification Act (administratively allocated) at any salary rate of the appropriate grades for such positions, not in excess of $1,600.

14 Comp. Gen. 448, December 11, 1934. An employee transferred from a position under Executive Order 6746 to a position under the Classification Act may receive initially any rate in the grade to which transferred not in excess of the rate he is receiving. 15 Comp. Gen. 102, August 6, 1935; 15 Comp. Gen. 797, March 14, 1936. A substitute garageman-driver in the Postal Service receiving $1,346.40 per annum was permitted to transfer to a position in CU–2 at $1,320, but not $1,380. 19 Comp. Gen. 763, February 28, 1940.

This principle applies to transfer from per diem to per annum status regardless of the reason for the transfer. 24 Comp. Gen. 102, August 11, 1944.

An exception to this general rule was made when certain positions were transferred by Executive order from the Reconstruction Finance Corporation to the War Assets Administration. Section 5 of Executive Order No. 9707, March 23, 1946, which amends Executive Order No. 9689, January 31, 1946, provides—

> 5. There shall be subject to the Classification Act of 1923, as amended, those positions transferred to the War Assets Corporation hereunder which are now subject to said Act, and also all positions transferred to the War Assets Administration hereunder; provided that if the salary of the incumbent of any position so transferred to the said Administration is above the maximum of the allocated grade such salary shall not be reduced so long as the position is held by the incumbent; and provided further, that if the salary of the incumbent of any position so transferred to the said Administration is between two salary steps of the grade to which the position is allocated, such salary shall be increased to the higher step.

In fixing under the Classification Act the initial salary rate of an employee occupying an unclassified position within the purview of the 40-hour week statute of March 28, 1934, which is to be classified for the first time, the rate may be that of such salary step in the classified grade to which the position is allocated as will cause no loss, or as little loss as possible, in total compensation when the gross compensation (inclusive of overtime compensation) authorized for the unclassified position is compared with the gross compensation (basic plus overtime or additional wartime compensation) authorized for the classified position for the same period of time. 19 Comp. Gen. 20, amplified. 23 Comp. Gen. 160, September 1, 1943.

The comparison is either between the two basic rates or the two gross compensation rates (basic rates plus overtime pay or additional wartime compensation). The basic rate in the Classification Act position to which transferred may not be fixed to include both the basic rate and the wartime additional compensation in the position outside the Classification Act. 24 Comp. Gen. 275, October 4, 1944.

If comparison of the gross compensation rates is not as advantageous to the employee, so far as saving his total pay outside the Classification Act is concerned, the agency may in its discretion choose comparison of the basic rates.

salary higher than the minimum rate of the grade when an employee is transferred or reassigned, do not apply when an employee in a position excepted from the competitive civil service but subject to the Classification Act is "reached" on a civil service register and it is sought to appoint him therefrom in his present or another position so that he may thus acquire a competitive civil service status.

The terms of the Civil Service Commission's Departmental Circular No. 190, June 14, 1939, required initial appointment at the salary rate at which the employee is reached. The Comptroller General in a decision of August 6, 1941, recognized the validity of this regulation, although a change in the status of an employee would not be a "new" appointment under the Classification Act.

The syllabus of this decision is as follows:

"The General Accounting Office has no jurisdiction or authority to fix or determine the conditions for acquiring a competitive classified civil-service status—whether in the same or different position or whether the position in which such status may be acquired is within or without the scope of the Classification Act of 1923.

"While decisions of this office with reference to the Classification Act of 1923 have held that employees transferred, reappointed, or reinstated from classified or unclassified positions to classified positions need not be appointed at the minimum salary rate of the grade, employees already in the Federal service under an appointment made without regard to the civil-service laws and regulations by competitive examination, when acquiring a classified civil-service status, must be appointed, under existing civil service regulations, at the minimum salary rate of the grade in which the position has been allocated." 21 Comp. Gen. 113, August 6, 1941.

Executive Order No. 9259, October 26, 1942, permits acquisition of civil service status without reduction to minimum rate in cases arising between July 1, 1941, and March 16, 1942, the effective date of the War Service Regulations.

3. **Details.**—Temporary details to the work of a higher or lower grade do not constitute promotions or transfers. A promotion or a permanent assignment to a position in a higher grade is accomplished under civil service rules where applicable. It is a formal action, not a temporary detail. An employee temporarily detailed to the duties of a position previously allocated in a higher grade will be entitled only to continue in receipt of the compensation of the lower grade until he is formally promoted and such promotion cannot be made retroactive. "The assignment to duties in the higher grade * * * did not constitute a promotion effective upon the date of such assignment." 4 Comp. Gen. 126, July 29, 1924; affirmed in 6 Comp. Gen. 133, August 19, 1926. See also 9 Comp. Gen. 128, September 18, 1929 and 15 Comp. Gen. 593, January 10, 1936.

In A–40890, February 25, 1932, the Recorder of Deeds raised the question whether it would be permissible to assign a clerk, CAF–2, temporarily as night watchman, CU–2. The Comptroller referred to Section 166, Revised Statutes, as amended by the act of May 28, 1896, 29 Stat. 179, 5 U. S. C. 38. This provides:

"Each head of a Department may, from time to time, alter the distribution among the various bureaus and offices of his Department, of the clerks and other employees allowed by law, except such clerks or employees as may be required by law to be exclusively engaged upon some specific work, as he may find it necessary and proper to do, but all details hereunder shall be made by written order of the head of the Department, and in no case be for a period of time exceeding one hundred and twenty days: *Provided*, That details so made may, on expiration, be renewed from time to time by written order of the head of the Department, in each particular case, for periods of not exceeding one hundred and twenty days. All details heretofore made are hereby revoked, but may be renewed as provided herein."

The ruling was that the temporary detail was permissible within the limitations of the above statute, and "upon compliance with any applicable civil service and/or classification rules and regulations," and that the employee concerned would be entitled to continue to receive the compensation of his regular position, citing 4 Comp. Gen. 126; *ibid.* 1030.

See also B–35161, June 30, 1943, in which it was ruled that a formal detail under 5 U. S. C. 38 must be revoked before a change of salary is permissible by promotion.

"During the period of detail from one position to another in the same department or agency of the Government pursuant to the quoted statute [5 U. S. C. 38], an employee remains in his regular position and his compensation during the period of detail continues to be that fixed in accordance with the laws and regulations applicable to this regular position. See sections 1764 and 1765, Revised Statutes, and 14 Comp. Dec. 294, 16 *id.* 161; 3 Comp. Gen. 913; 4 *id.* 126, 1030; 5 *id.* 310, 374; 9 *id.* 128; 18 *id.* 923. It is not until the employee's detail is formally terminated and he actually is appointed to the position in which he has served under detail, that the salary of the position to which he had been detailed may be paid to him. See decision of June 30, 1943, B–35161." 23 Comp. Gen. 145, 146, August 28, 1943.

Where the employee is on detail to a position in a higher grade, "there is not for application the general rule * * * that an allocation or reallocation of a position for salary purposes is effective from the beginning of the pay period current when notice of the allocation or reallocation of the position is received in the administrative office, for the reason that the detail of the employee must be terminated by administrative action, and the employee transferred or appointed to the new position." 24 Comp. Gen. 563, January 27, 1945; *id.* 816, May 14, 1945. This case is to be distinguished from 18 Comp. Gen. 794, April 17, 1939; in this case the employee was not on detail, but there was a gradual development of the position already held by the employee before and after a reorganization.

The necessity of terminating a detail by administrative action before the salary of the high grade can be paid exists also when an employee is regarded as on detail to a higher position for which he has not yet qualified under Departmental Circular No. 257 or other civil service regulation, even though allocation or reallocation action has been completed. In such a case the employee is to be regarded as "remaining in status quo as on detail until he qualifies for the salary rate of the higher grade" and this salary rate may become effective only after "administrative action terminating the detail and promoting the employee to become effective on or after the date

the employee meets the minimum service eligibility requirements of the Commission". 24 Comp. Gen. 518, January 12, 1945; Departmental Circular No. 518, March 15, 1945.

Normally, when an entirely new position, as distinguished from an additional position, is created by an administrative office and an employee already in the service is assigned to it pending final allocation action, the assignment should be considered as in the nature of a detail, and any increase in compensation resulting from the reallocation would not commence with the beginning of the pay period current when notice of the final allocation action is received in the administrative office but would commence only with the effective date of the employee's appointment to the new position. 24 Comp. Gen. 816, May 14, 1945.

D. REINSTATEMENTS

Reinstatements are not new appointments within the meaning of Rule 6 of Section 6 of the Classification Act. 3 Comp. Gen. 1001, 1004, June 26, 1924; 20 Comp. Gen. 626, April 11, 1941. This is true even though the prior employment was not subject to the Classification Act. 22 Comp. Gen. 925, March 29, 1943. Consequently, the initial salary of a reinstated employee need not, as a matter of law, be the minimum rate of the grade.

The present general rule is that employees may be reinstated at an initial rate of pay not in excess of that which was received when *last* separated from the service except when an increase over this rate is necessary in order to pay the minimum of the grade to which reinstated.

Subject to the availability of appropriated funds, the administrative office may, within its discretion, fix the initial salary rate of an employee reinstated in the same or corresponding grade at not to exceed the salary rate paid upon separation from the service, and may fix the initial salary rate of an employee reinstated in a higher or lower grade at any rate within the salary range of that grade not to exceed the salary rate paid upon separation from the service, provided that if the minimum salary rate of the higher grade in which reinstated is in excess of the salary rate the employee was receiving at time of separation, the minimum salary rate of such higher grade shall be paid. This rule is for application both in the departmental and field services." 16 Comp. Gen. 598, 600, December 17, 1936; followed in 20 Comp. Gen. 318, December 17, 1940.

An employee who served in a position not under the Classification Act, then served in a position without compensation, and subsequently was reappointed to a position under the Classification Act may—notwithstanding the intervening period of service without compensation—be paid initially at any rate in the salary range of the grade to which reappointed, not exceeding the rate previously received in the unclassified position. 22 Comp. Gen. 925, March 29, 1943.

It is the rate received when *last* separated that governs, regardless of the agency in which then employed, even though the reinstating agency may have paid the employee a higher rate during a period of employment prior to the employment from which separated. 24 Comp. Gen. 368, November 9, 1944.

The rule stated above uses the term "reinstatement" in the general sense of reemployment in the Federal service in any position subject

to the Classification Act. It is applicable regardless of the particular method by which the reemployment is effected, unless a law or regulation expressly negatives its application. 24 Comp. Gen. 260, September 25, 1944.

The basic rate actually received at the termination of an employee's last period of service prior to the effective date of the Federal Employees Pay Act of 1945—July 1, 1945—regardless of the administrative regulation having the force and effect of law under which such salary rate was paid, may be increased by the formula prescribed by section 405(a) of said act to determine the maximum rate above the minimum of the grade which may be paid initially upon the employee's restoration on or after July 1, 1945, in a position subject to the Classification Act. 25 Comp. Gen. 230, August 28, 1945. This same general rule will probably apply to the increase provided by the Federal Employees Pay Act of 1946 which is effective July 1, 1946. However, the Comptroller General has not yet made a formal ruling.

E. CHANGE OF ALLOCATION OF POSITION WHILE OCCUPIED BY SAME EMPLOYEE

When the allocation of a position is changed during the employee's tenure therein, the rate of pay which is initially applicable is determined according to the rules which apply to transfers, promotions, and demotions.

If a position is reallocated while its former incumbent is in the military service, and he is entitled to the reemployment benefits of the Selective Training and Service Act of 1940, or Public Resolution No. 96 of August 27, 1940, or Section 7 of the Act of August 18, 1941, Public Law No. 213, he is entitled, upon restoration to his former position, to the benefit of any reallocation of that position made in the meantime. There is no legal or accounting objection to the administrative recording of changes in the status of former employees during period of military duty. 21 Comp. Gen. 1007, 1010, May 11, 1942.

Under certain circumstances, the salary rate applicable when a departmental position is reallocated downward on the initiative of the Civil Service Commission may be the employee's existing salary, even if in excess of the maximum rate of the lower grade. Section 4, Brookhart Act of July 3, 1930, provides "that in all cases where the Commission shall change the allocation of a position to a lower grade the rate of pay fixed for such position prior to such change may be continued so long as the position is held by the incumbent then occupying it."

Certain limitations on the applicability of this saving clause are, however, important.

the position itself has not changed substantially in duties and responsibilities. It does not protect an employee's existing salary if above the maximum rate of the new grade, when his duties and responsibilities have been so changed since his position was last allocated as to require allocation in a lower grade. 11 Comp. Gen. 352, March 17, 1932.

2. It does not apply to administrative reallocations downward in the field service. 11 Comp. Gen. 352, March 17, 1932; A–44245, January 6, 1933.

"The quoted proviso from section 4 of the classification act of 1923, as amended by section 3 of the Brookhart Salary Act of July 3, 1930, 46 Stat. 1005, is not applicable in this case, for two reasons—(1) the employee is in the field service over which the 'board', meaning the Personnel Classification Board, has no jurisdiction; and (2) the action taken by the administrative office, in effect, was not the allocation or placement of the same position in a lower grade, but the creation of a different position with such duties and responsibilities as required its allocation or placement in a lower grade.

"Section 4 of the original classification act, and as amended, prescribes a procedure incident to the allocation and reallocation of positions for the guidance of the Personnel Classification Board, which has jurisdiction only in the departmental service in the District of Columbia. Hence, the saving clause in the proviso to the section can have no application to employees in positions the allocation of which is not subject to approval by the Personnel Classification Board. The basis for the saving clause was the joint jurisdiction of the administrative office and the Personnel Classification Board in the allocation and reallocation of positions in the departmental service and to prevent reduction in the salary rates of employees remaining in the same position by the final action of any agency outside the administrative office in which the employee is serving. As to the field service, where the allocation and reallocation of positions, pursuant to the principles of classification, are exclusively an administrative matter, there is not present the conditions which prompted the enactment of the saving clause in question.

"The saving clause is personal to an employee and remains applicable only so long as the employee remains in the same position having the same duties and responsibilities. Obviously, in the instant case, while the duties may have remained partially the same after the reduction in the number of employees from two to one, the duties and responsibilities were changed from those involving supervision to those involving no supervision. Even if applicable to the field service, the saving clause could not be invoked in this case, for the reason that the employee did not remain in the same position on and after January 1, 1931, within the meaning of its terms." 11 Comp. Gen. 352, 353, March 17, 1932.

Note.—Reallocations of field positions were considered "administrative promotions" within the meaning of Section 202 of the Economy Act of June 10, 1932, in view of the fact that administrative action of the department only was involved. 12 Comp. Gen. 20, July 12, 1932; 12 Comp. Gen. 48, July 15, 1932. But if made by the Civil Service Commission in the case of departmental positions, they were not so considered. 12 Comp. Gen. 120, July 26, 1932; 12 Comp. Gen. 182, August 5, 1932.

3. The saving clause is applicable only to reallocations downward by the Civil Service Commission on its own motion of allocations theretofore approved by it, and is not applicable to original allocation of positions, the salaries of which previously had not been required to be fixed, and which had not been fixed, pursuant to the Act. 17 Comp. Gen. 460, December 2, 1937; 17 Comp. Gen. 715, March 8, 1938.

With respect to administrative allocations in the field service, Section 17 of the Act of June 16, 1933, 48 Stat. 308, amending Section 3 of the Welch Act of May 28, 1928, provided:

"That in all cases where, since December 6, 1924, in such adjustment the position occupied by an employee has been or shall be allocated to a grade with a maximum salary below the salary received by the incumbent, the rate of pay

fixed for such position prior to such allocation may be paid after the date of the enactment of this act so long as the position is held by the incumbent occupying it at the time of such allocation and the Comptroller General of the United States is authorized and directed to allow credit in disbursing officer's accounts for all payments heretofore made at such higher rates."

This saving clause, however, does not extend to the field service the benefit of the saving clause appearing in the proviso to Section 4 of the Classification Act, as amended by Section 4 of the Brookhart Salary Act, applicable only in the departmental service. It is not effective in the case of an employee whose field position, once allocated under the provisions of the acts to which the clause applies, is administratively reallocated or readjusted to a lower grade, the clause being applicable only to the initial administrative action in allocating the field position. 18 Comp. Gen. 35, July 13, 1938.

F. POSITION AND EMPLOYEE BROUGHT UNDER CLASSIFICATION ACT AFTER JULY 1, 1924

In some instances after July 1, 1924, due to (a) provision of law, (b) the exercise of an election (under Executive order) by heads of department, or (c) transfer of work from the field to the departmental service positions (already occupied by employees receiving certain salaries) were and are required to be initially allocated by the Civil Service Commission under the Classification Act. The rules of salary adjustment in Section 6 of the Classification Act applied only to allocations effective July 1, 1924. Consequently, it has been necessary for the Comptroller General to establish, by decision, rules for adjusting the salaries of employees in other instances where the Classification Act was being initially applied to their positions. A–52844, April 26, 1934; 15 Comp. Gen. 102, August 6, 1935; 16 Comp. Gen. 994, May 10, 1937; 17 Comp. Gen. 460, December 2, 1937; 17 Comp. Gen. 715, March 8, 1938, 17 Comp. Gen. 1061, June 9, 1938. Compare 18 Comp. Gen. 223, September 6, 1938.

In 1939, the Comptroller General reviewed most of these decisions and laid down rules for the future as follows:

"Accordingly, in the light of the foregoing decisions, the rules for fixing the initial salary rates under the Classification Act, as amended, of employees already occupying unclassified positions brought within the scope of the Classification Act for the first time, may be restated as follows:

"(a) Where the salary rate of the unclassified position is within the range of the salaries prescribed by the Classification Act for that grade but does not fall within one of the statutory rates thereof, there is no authority to increase the rate paid in the unclassified position but the initial rate may be the next lower Classification Act salary rate in the grade.

"(b) Where the salary rate received in the unclassified position is more than the maximum rate of the grade in which the position has been allocated, the initial salary rate may be the maximum salary rate of the grade in which the position has been allocated.

"(c) Where the salary rate received in the unclassified position is less than the minimum salary rate of the grade in which the position has been allocated, the initial salary rate under the Classification Act must be the minimum salary rate of the grade in which the position is allocated." 19 Comp. Gen. 20, 23, July 7, 1939.

These rules compared *basic* salary rates because at that time employees subject to the Classification Act were not generally entitled to overtime compensation. They became so entitled beginning May 1, 1943, under the War Overtime Pay Act of 1943, Public Law No. 49, 78th Congress. Subsequently, the question arose of what rules for adjustment were to be applied when for the first time employees paid at daily or hourly rates and entitled to overtime pay under the Act of March 28, 1934, 5 U. S. C. 673c, were to be brought with their positions within the purview of the Classification Act. In ruling on this point, the Comptroller General authorized adjustments so as to lead to no loss of "take home" pay or as little loss as possible to fix the salary at one of the rates of the Classification Act, but to no increase in "take home" pay. In applying this principle, comparison was made between *gross* amounts, including both basic and overtime or additional wartime compensation, for the same length of administrative workweek. 23 Comp. Gen. 160, September 1, 1943.

The salaries applicable when extensions of the Classification Act are made under Title II of the Ramspeck Act of November 26, 1940, will be established according to the rules of Section 6 of the Classification Act. Section 5 (b) of Title II reads:

> The initial compensation of the incumbents of the offices or positions to which the provisions of the Classification Act of 1923, as amended, are extended under this act, shall be fixed in accordance with section 6 of the Classification Act of 1923, as amended.

(August 1944)

VII. WITHIN-GRADE SALARY ADVANCEMENTS

The allocation of a position determines the salary range within which the pay of its incumbent will fall. New appointments are made at the lowest rate in each salary range. The rate initially payable upon transfer, promotion, or reinstatement is governed by decisions of the Comptroller General. The salary-advancement act of August 1, 1941, Public Law No. 200, 77th Congress, Title 5, U. S. C. A., Sec. 667, amended section 7 of the Classification Act of 1923, by establishing a definite plan for within-grade salary advancements. Presidential regulations issued under this Act in Executive Order No. 8882, were in effect from September 3, 1941, to July 1, 1945.

Section 7 of the original Classification Act of 1923 provided that "increases in compensation shall be allowed upon the attainment and maintenance of the appropriate efficiency ratings, to the next higher rate within the salary range of the grade," if funds are available. This provision, however, did not make such salary increases automatic or mandatory. 6 Comp. Gen. 355, November 20, 1926. The attainment of the appropriate efficiency rating had the effect of making the employee eligible for a salary increase which might be granted "only if and when the administrative office makes the promotion effective after determining that all other requirements of the Classification Act, the average provision, and the appropriation act have been met." 7 Comp. Gen. 721, May 15, 1928. On August 8, 1941, 21 Comp. Gen. 118, the Comptroller General ruled that the "average provision" of appropriation acts was rendered inoperative thereby.

The Federal Employees Pay Act of 1945, Public Law No. 106—79th Congress, Title 5, U. S. C. A., Sec. 667, further amended section 7 of the Classification Act, and Executive Order No. 9578 of June 30, 1945 contained the regulations issued by the Civil Service Commission (Departmental Circular No. 529, June 30, 1945) and approved by the President governing the administration of that Act.

The Federal Employees Pay Act effective July 1, 1946, amends the Federal Employees Pay Act of 1945, and current regulations effective on and after July 1, 1946, appear in Chapter Z–1 of the Federal Personnel Manual.

Within-grade salary advancements of employees in positions under the Classification Act, as amended, can be made only in accordance with these laws and regulations. 22 Comp. Gen. 489, November 23, 1942.

A. COVERAGE

To come within the purview of the salary advancement act the employee must (1) be paid on a per annum salary basis, (2) be paid according to the pay scales of the Classification Act of 1923, as amended, and (3) occupy a "permanent" position within the meaning of the act and regulations.

1. **Per annum salary basis.**—The law covers "employees compensated on a per annum basis."

Positions allocated to the Clerical-Mechanical Service of the Classification Act are thus not subject to the salary advancement plan because they are paid on an hourly, and not a per annum basis. 21 Comp. Gen. 318, October 13, 1941; 25 Comp. Gen. 212, August 22, 1945. Similarly, employees paid on a per diem basis are excluded. 21 Comp. Gen. 541, 548, December 8, 1941. However, if they are paid on a per annum basis, the fact that they are part-time employees or that they are paid only for time actually employed does not remove them from the scope of the statute. 21 Comp. Gen. 369, October 27, 1941; 21 Comp. Gen. 569, December 15, 1941; 21 Comp. Gen. 644, January 7, 1942. There may, however, be a special statute (such as the Act of May 14, 1937, 50 Stat. 148, in the case of part-time, intermittent physicians, Public Health Service) which contains limitations preventing the applicability of the salary advancement plan. 21 Comp. Gen. 791, February 21, 1942.

2. **Payment according to pay scales of Classification Act.**—The statutory phrase "positions within the scope of the compensation schedules fixed by this Act" is defined in the regulations as follows:

> Positions within the scope of the compensation schedules fixed by this Act shall include all permanent positions, including positions in the departmental and field services, in the executive and legislative branches, in government-owned or government-controlled corporations, and in the municipal government of the District of Columbia, the compensation of which has been fixed on a per annum basis, pursuant to the allocation of such positions to the appropriate grade either by the Civil Service Commission or by administrative action of the department, establishment, corporation, or agency concerned, in accordance with the compensation schedules of the Classification Act of 1923, as amended.

The scope of the salary advancement plan does not depend on whether the Commission (in the departmental service) or the department (in the field service) makes the final service and grade allocation. In either case, the positions fall within the act. However, where the National Capital Park and Planning Commission (a departmental agency) was authorized to fix pay for certain positions

without regard to the Classification Act, its election to follow the pay scales of the Classification Act would not bring the positions within the salary advancement plan, unless and until the Commission's allocation approvals were secured. 21 Comp. Gen. 541, December 8, 1941; see also 25 Comp. Gen. 58, July 14, 1945.

Custodial positions in the Postal Field Service previously under the Classification Act were brought within the scope of Public Law 134—79th Congress, effective July 1, 1945. Since that date, all positions in the Postal Service are paid under that law and are therefore not subject to the within-grade salary advancement plan established under the Classification Act.

When Congress establishes by law a fixed, single rate of pay for a class of positions, such as $4,000 per annum for locomotive inspectors, Interstate Commerce Commission, the effect is to deny to the employees the benefits of within-grade salary advancement, since no other rate is legally payable. 21 Comp. Gen. 184, August 26, 1941. However, where a statute merely establishes a maximum salary limitation and does not exclude the positions from the Classification Act, it is possible to allocate the positions to services and grades and have the salary advancement act apply. For example, under the Act of May 27, 1936, supervising inspectors, Bureau of Marine Inspection and Navigation, may be paid not to exceed $6,000 per annum. By allocating these positions to CAF–13, the department met the necessary conditions to bring the positions within the salary advancement plan, although rates in CAF–13 in excess of $6,000 could not be used. 21 Comp. Gen. 323, October 13, 1941.

3. **"Permanent" positions.**—Permanent positions are defined in the regulations to include all positions except those designated as temporary by law and those established for definite periods of twelve months or less.

Whether an employee occupies a permanent or a temporary position within the meaning of the salary advancement law and regulations depends on his tenure of employment under any applicable law or regulation or by the terms of his appointment.

Positions to which appointments were made under the War Service Regulations for the duration of the war and six months thereafter are permanent positions within the scope of this definition. Positions in which employees are serving definite probationary or trial periods under Civil Service rules, or under regulations issued by the Civil Service Commission, shall not, for that reason alone, be regarded as being other than permanent positions. Positions filled by temporary appointment under section 2 of Temporary Civil Service Regulation VIII are temporary for the purpose of the within-grade salary advancement regulations. See 21 Comp. Gen. 369, October

27, 1941; 21 Comp. Gen. 550, December 10, 1941; 21 Comp. Gen. 924, April 10, 1942; and 21 Comp. Gen. 1067, May 29, 1942.

4. **Time when coverage conditions must be met.**—The employee must be paid on a per annum salary basis under the Classification Act and occupy a permanent position *at the beginning of the next pay period* after he has met all other conditions prerequisite to salary advancement. His status at that time governs, regardless of the fact that it may previously have been different. See 21 Comp. Gen. 313, October 11, 1941; 21 Comp. Gen. 369, October 27, 1941.

5. **Exception of Presidential, Senate-confirmation appointments.**—The Act of August 1, 1941, states that its salary advancement provision "shall not apply to the compensation of persons appointed by the President, by and with the advice and consent of the Senate." This exception is to be applied to the current status of the positions concerned. The reason for the exception is the practical limitation on the tenure of such persons, and if the status of their positions in this respect changes later, the exception no longer applies. For example, if and when positions of this type with their incumbents are brought within the competitive civil service, the regular salary advancement plan is applicable to such incumbents. 21 Comp. Gen. 256, September 25, 1941.

A special situation arises when an appropriation is made unavailable "to pay the salary of any person at the rate of $4,500 per annum or more unless such person shall be appointed by the President by and with the advice and consent of the Senate." In such cases an employee in CAF–11 at $4,400 is not entitled to any pay increase, under the salary advancement act or otherwise, unless and until he is appointed in the manner prescribed. 22 Comp. Gen. 923, March 29, 1943. But see 25 Comp. Gen. 55, July 14, 1945, where restriction was not on payment of salary but on type of appointment.

B. CONDITIONS OF ELIGIBILITY FOR PERIODIC SALARY ADVANCEMENTS

In order to become eligible for a periodic salary advancement, an employee covered by the Act must—

Not have attained the maximum rate of the grade to which his position is allocated; and

Have an efficiency rating of good or better than good; and

Have served a waiting period of either 12 or 18 months, depending on the grade of his position; and

Not have received an "equivalent increase in compensation from any cause" during this waiting period; and

Be certified by the head of his department or agency as satisfactory in service and conduct.

1. **Below maximum rate of grade.**—Since Section 7 of the Classification Act, as amended, provides for and regulates *within-grade* salary advancements, an employee who has already reached the maximum rate of the grade to which his position is allocated is not entitled to further within-grade increases. The words in the statute "who have not attained the maximum rate of compensation for the grade in which their positions are respectively allocated" have reference to the grade held by the employee at the beginning of the pay period when he otherwise would be eligible for a periodic salary advancement, and not to a different grade held by him during a part of the 12 or 18 months' period. For example, an employee who received the maximum rate of CAF–4 during part of his 12-month waiting period, but who was receiving the third salary step in CAF–5 at the beginning of the pay period after all other conditions of eligibility had been met is entitled to a periodic salary advancement. See 22 Comp. Gen. 151, August 19, 1942.

2. **Efficiency rating.**—The basic efficiency rating requirement for within-grade salary advancements is that the employee must have a current appropriate efficiency rating of "Good" or better. (See 21 Comp. Gen. 1067, May 29, 1942; 23 Comp. Gen. 486, January 4, 1944; and 23 Comp. Gen. 560, February 2, 1944).

A current appropriate rating in a position is not appropriate for use in determining eligibility for periodic increases in a different grade (but see on "reallocations" 25 Comp. Gen. 90, July 23, 1945); such a rating may be used for determining eligibility for periodic increases in another position of the same grade under specific conditions set forth in the regulations (see Federal Personnel Manual, pages E1–5 and 6.)

An efficiency rating made under an administrative plan for an employee in an ungraded position is not appropriate for use in a similar position under the Classification Act. In the position under the Classification Act his eligibility on the basis of efficiency must be determined by a current appropriate rating.

From August 1, 1941, to July 1, 1945, an employee whose rate of compensation was at or above the middle rate of the grade could not be advanced unless his efficiency rating was better than "
July 1, 1945 (the Federal T
rating of "Good" or bett
for one salary step advan
For the purposes of the
fourth rate in CPC–2
for the grade.)

Where the current efficiency rating of an employee was not made in accordance with the Uniform Efficiency Rating System, it may not be used as a basis for salary advancement under Section 7 of the

Classification Act as amended. (See 23 Comp. Gen. 560, February 2, 1944.)

An employee transferred from a position not subject to the efficiency rating system prescribed by the Civil Service Commission under the Classification Act to a position subject to such system will not be entitled to a within-grade salary advancement until the beginning of the first pay period after there is *on record* an efficiency rating of "Good" or better, for the employee in his new position. (See 21 Comp. Gen. 1067, May 29, 1942.)

An efficiency rating is appropriate as a basis for a periodic pay increase only (1) when it reflects work performance in the grade in which such pay increase is to be made, (2) when it became a current rating by approval of the efficiency rating committee acting for the head of the agency within 15 months prior to the date of the proposed periodic pay increase, and (3) when such efficiency rating has not served as a basis for a previous pay increase. If there is no current appropriate rating on record, a special rating is required. Ordinarily, a rating should be made within the agency which is to grant the proposed periodic pay increase but if such increase is proposed within 90 days after transfer from a previous agency, a rating from the previous agency which meets the foregoing requirements may be used.

Special efficiency ratings or other official ratings required as a basis for determining eligibility for a periodic increase must be *on record* as required by statutory regulation, before they may form the basis for determining the eligibility status of an employee for a periodic increase. These ratings may not be made retroactively effective. (See 25 Comp. Gen. 90, July 23, 1945.)

The regulations provide that—

> In the event a change or adjustment is made in an officer's or employee's current efficiency rating, either by administrative action or as the result of a review and determination by a board of review in accordance with the provisions of Section 9 of the Classification Act of 1923, as amended, the employee's eligibility for salary advancement shall be determined according to the efficiency rating as changed or adjusted and other conditions of the salary advancement plan, and any periodic within-grade salary advancement to which he may be entitled shall be made effective as of the date he would have received the advancement had no error been made in the original rating.

Under Section 402 (b) (4) of the Federal Employees Pay Act of 1945 and related regulations, a "current appropriate rating" is not required to determine eligibility for within-grade salary advancements based on military, merchant marine, or war transfer service

upon restoration under the conditions set forth in the Act and the regulations.

3. **Waiting period and service requirements.**—For each successive or periodic salary advancement the law establishes a "waiting period" in terms of length of service, completion of which is a prerequisite to eligibility. This waiting period is:

(a) Twelve months of service if the employee is in a grade in which the compensation increment is less than $200; or
(b) Eighteen months of service if the employee is in a grade in which the compensation increment is $200 or more.

These waiting periods are computed from the effective date of the last periodic salary advancement under the Act, or the last "equivalent increase in compensation," whichever is later. The time when they are completed is computed under the rules set forth in the regulations, as follows:

In computing the periods of service required for within-grade salary advancements there shall be credited to such service:

(a) Continuous civilian employment in any branch (legislative, executive, or judicial), executive department, independent establishment or agency, or corporation of the Federal Government or in the municipal government of the District of Columbia.
(b) Time elapsing on annual, sick, or other leave with pay.
(c) Leave without pay and furlough, not to exceed in total the equivalent of twenty-two eight-hour days in the basic forty-hour workweeks, within the period of service required for one periodic within-grade advancement.
(d) Service rendered prior to absence due to involuntary separation, or due to furlough or leave without pay, where no single period of such absence is in excess of twelve months.
(e) Service rendered prior to absence due to resignation, where no single period of such absence is in excess of thirty calendar days.

If at the end of the time period of twelve or eighteen months, an employee's total leave without pay and furlough is in excess of 22 workweek days as under (c) above, he must serve in a pay status an additional number of basic workweek days and hours equal to such excess, to complete the service required for advancement.

Within-grade salary advancements relate exclusively to increase in *basic* compensation which is earned during the basic workweek of 40 hours. Overtime service is not required to earn a within-grade salary advancement. 25 Comp. Gen. 121, July 28, 1945.

"An employee working either full time or less than full time in a permanent position subject to the Classification Act, actually must be in a pay status at straight-time rate for at least 230 days or 360 days, as the case may be, during a period of not less than 12 or 18 calendar months to become eligible, so far as length of service is concerned, for a within-grade salary advancement, provided that no period in a non-pay status equals or exceeds one year. Sundays and Saturdays on which no work is performed outside of the basic workweek should not be included in computing the 30 days in a non-pay status that may be counted . . . as service within any one time period for a within-grade salary advancement." 25 Comp. Gen. 121, July 28, 1945.

"Temporary increases or decreases in compensation resulting from temporarily occupying classes of positions between seasons other than their regular seasonal position may be disregarded so far as concerns the definition of the term 'equivalent increase in compensation,' but all continuous civilian employment both in the regular seasonal position and in the temporary position occupied between seasons—either within or without the purview of the Classification Act—may be counted pursuant to the terms of the current regulations in computing the 12 or 18 months' service required . . . in determining an employee's eligibility for a within-grade salary advancement so far as length of service is concerned." 25 Comp. Gen. 178, August 11, 1945.

In computing the waiting period for part-time employees paid on a per annum basis, or intermittent employees paid on a per annum basis when actually employed, the rule is that the employee must have rendered 12 or 18 months of actual service as distinguished from calendar months, before he becomes eligible for a within-grade salary advancement. This period is computed on the basis of the time in a pay status at straight-time rates that full-time employees of the same class would be required to work. The steps cannot be fractionalized in the ratio of part-time to full-time. 21 Comp. Gen. 569, December 15, 1941; 21 Comp. Gen. 644, January 7, 1942; 25 Comp. Gen. 121, July 28, 1945.

Under subsection (a) of this regulation, there may be counted, as a part of one waiting period, service in a position which is not subject to the salary advancement plan, or even to the Classification Act, provided that the employee occupies a position subject to the salary advancement plan at the beginning of the first pay period after his right to payment of a periodic salary advancement accrues. For example, there may be counted service in a temporary position (21 Comp. Gen. 313, October 11, 1941), or service in a position paid on a per diem basis (21 Comp. Gen. 369, October 27, 1941). Service in any branch of the Government may be included. 23 Comp. Gen. 471, December 31, 1943; 24 Comp. Gen. 876, June 6, 1945.

A demotion, or a transfer or promotion without an equivalent increase in salary, either within the same agency or to a different one, does not stop or suspend the running of the waiting period. An employee who serves out the remainder of a waiting period after such transfer, promotion, or demotion, has met the length of service requirement for a within-grade salary advancement. 21 Comp. Gen. 369, October 27, 1941; 22 Comp. Gen. 151, August 19, 1942. See also 21 Comp. Gen. 569, December 15, 1941.

Under subsection (b) of this regulation, authorized absence from duty in a pay status, while the employee is not on active duty due to annual, sick, or other leave with pay, counts in the same way as if he had been on active duty during the period of absence.

However, time absent from duty during which an employee is receiving disability compensation under the Employees' Compensation Act should be regarded as a period of leave without pay in applying the regulations. See 21 Comp. Gen. 945, April 22, 1942.

Absence from Service: Prior to July 1, 1946, the regulations governing the effect of absence on within-grade salary advancements provided:

> *Less than 30 days' absence from any cause:* An absence from active duty in a nonpay status not exceeding 30 days within any one time period had no effect in computing the waiting period, which began and ended on the same dates as if the absence had been continuous active duty. 22 Comp. Gen. 969, April 14, 1943; 23 Comp. Gen. 367, November 16, 1943.
>
> *More than 30 days' leave without pay:* Thirty days of any leave-without pay period, when such period was more than 30 days but not more than one year, could be credited in addition to service before the absence. 21 Comp. Gen. 313, October 11, 1941; 21 Comp. Gen. 791, February 21, 1942; 23 Comp. Gen. 617, February 23, 1944 (23 Comp. Gen. 367, modified).
>
> *More than 30 days' break in service:* After an absence of more than 30 days due to, or *including*, a break in service, the employee began an entirely new waiting period on his return to active duty, and no period during or prior to such absence could be included. See 24 Comp. Gen. 1104, June 12, 1945.
>
> *More than one year's absence from any cause:* An employee absent more than one year started a new waiting period upon his return to active duty; service prior to his absence was excluded in computing the waiting period. 21 Comp. Gen. 369, October 27, 1941; 23 Comp. Gen. 367, November 16, 1943.

Until July 1, 1945, the definition of "30 days" was 30 calendar

days; the Comptroller's decision of July 28, 1945, excluded "non-work" Saturdays and Sundays from "30 days". See 25 Comp. Gen. 121, July 28, 1945.

Effective July 1, 1946, the regulations governing the effect of absence on within-grade salary advancements, provide:

> *Furlough or leave without pay:* An absence from active duty on leave without pay or furlough not exceeding the equivalent of twenty-two eight-hour days in the basic forty-hour work-weeks, within the period of service required for one periodic advancement, has no effect in computing the waiting period, which begins and ends on the same dates as if such absence had been continuous active duty.
>
> If the absence exceeds the equivalent of twenty-two eight-hour days in the basic forty-hour workweeks, twenty-two such days may be counted as service.
>
> *Absence due to involuntary separation:* Service prior to absence *not* in excess of twelve months, due to *involuntary* separation, furlough, or leave without pay, is included in computing the period of service required for one periodic advancement upon the employee's return to active duty. If such absence is in excess of twelve months, the employee begins an *entirely* new waiting period and no prior service is credited.
>
> *Break in service—voluntary:* Service prior to absence due to *voluntary* resignation, where no single period of such absence is in excess of 30 *calendar* days, is credited toward one waiting period upon the employee's return to active duty. If the absence due to resignation is in excess of 30 calendar days, the employee begins an *entirely* new waiting period on his return to active duty. In either case, the period of absence cannot be included.
>
> (Note: The above rules relate to civilian service; see below for rules relating to "Military Service.")

4. **Crediting of Military, Merchant Marine, and War Transfer Service.**—The Acts providing reemployment rights for employees upon release from military service are as follows: Selective Training and Service Act of September 16, 1940, 54 Stat. 891; Act of July 28, 1942, 56 Stat. 724; Public Resolution No. 96, August 27, 1940, 54 Stat. 858; Section 7 of the Act of August 18, 1941, Public Law No. 213, 55 Stat. 627; or the Merchant Marine Act of June 23, 1943, Public Law No. 87, 78th Congress. The language in the above statutes relating to reemployment benefits is substantially similar.

Quoted below are pertinent provisions of Section 8 of the Selective Training and Service Act:

> "SEC. 8 (a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him satisfactorily completes his period of training and service under Section 3 (b) shall be entitled to a certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained.
>
> (b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within forty days after he is relieved from such training and service—
>
> (A) If such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;
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> * * * * * * *
>
> (c) Any person who is restored to a position in accordance with the provisions of paragraph (A) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration.

The period within which application for restoration must be made was changed, by the Act of December 8, 1944, Public Law No. 473—78th Congress, to 90 days after release from military service in armed forces or from hospitalization continuing after discharge from a period of not more than one year.

Section 10 (a) of the Selective Training and Service Act of 1940, authorized the President to prescribe the necessary rules and regulations to carry out the provisions of the act, and under section 10 (b) he further was authorized "under such rules and regulations as he may prescribe, to delegate and provide for the delegation of any authority vested in him under this Act to such officers, agents, or persons as he may designate or appoint for such purpose or as may be designated

or appointed for such purpose pursuant to such rules and regulations as he may prescribe."

Under date of February 26, 1944, the President addresssed letters to the Civil Service Commission and the heads of executive departments and agencies stating that he had designated the Civil Service Commission as his representative to issue instructions from time to time regarding the rights of veterans to restoration to their former Federal positions under certain sets of circumstances and required such departments and agencies to adhere strictly to the instructions issued by the Commission. Whether a veteran has been restored to a position within the meaning of Section 8 of the Selective Training and Service Act of 1940 is dependent upon a determination by the administrative office under the instructions of the Civil Service Commission. In B-57646, Comp. Gen. June 12, 1946, it was held that the determination made by the Civil Service Commission, to the effect (1) that the Federal Government is not to be considered a single employer for the purpose of the Selective Training and Service Act, relating to reemployment benefits, (2) that a veteran does not have a mandatory right to restoration in an agency other than the one he left to enter military service, and (3) that the acceptance of employment in a different agency does not constitute restoration under the law and regulation, would be regarded by the Comptroller General as a decision by competent authority. Questions of salary and the proper use of public funds after a determination has been made that a returning veteran has or has not been restored to a position in accordance with the above-mentioned Act are properly for determination by the Comptroller General.

(Note: For rulings on reemployment benefits prior to the above-mentioned determination, see 24 Comp. Gen. 410, November 24, 1944; 24 Comp. Gen. 876, June 6, 1945.)

Section 402 (b) (4) of the Federal Employees Pay Act of 1945, amending Section 7 of the Classification Act of 1923, provides:

> "(4) That any employee, (A) who, while serving under permanent, war service, temporary, or any other type of appointment, has left his position to enter the armed forces or the merchant marine, or to comply with a war transfer as defined by the Civil Service Commission, (B) who has been separated under honorable conditions from active duty in the armed forces, or has received a certificate of satisfactory service in the merchant marine, or has a satisfactory record on war transfer, and (C) who, under regulations of the Civil Service Commission or the provisions of any law providing for restoration or reemployment, or under any other administrative procedure with respect to employees not subject to civil service rules and regulations, is restored, reemployed, or

reinstated in any position subject to this section, shall upon his return to duty be entitled to within-grade salary advancements without regard to paragraphs (2) and (3) of this subsection, and to credit such service in the armed forces, in the merchant marine, and on war transfer, toward such within-grade salary advancements. As used in this paragraph the term 'service in the merchant marine' shall have the same meaning as when used in the Act entitled 'An Act to provide reemployment rights for persons who leave their positions to serve in the merchant marine, and for other purposes,' approved June 23, 1943, (U. S. C., 1940 edition, Supp. IV, title 50 App., secs, 1471 to 1475, inc.)."

Regulations issued by the Civil Service Commission in Departmental Circular No. 529, June 30, 1945, were replaced by regulations effective July 1, 1946, contained in Chapter Z-1 of the Federal Personnel Manual, and with regard to military service, these regulations now provide:

"(f) Service in the armed forces, in the merchant marine, or on war transfer subject to the following conditions: The employee must have (1) left his position to enter the armed forces or the merchant marine, or to comply with a war transfer, (2) been separated under honorable conditions from active duty in the armed forces, or have received a certificate of satisfactory service in the merchant marine, or have a satisfactory record on war transfer, and (3) been restored, reemployed, or reinstated in any permanent position within the scope of the compensation schedules fixed by the Classification Act of 1923, as amended, under regulations of the Civil Service Commission which provide for mandatory restoration or reemployment, or the provisions of any law providing for mandatory restoration or reemployment, or any other administrative procedure having a similar purpose with respect to employees not subject to civil service rules and regulations. Any employee entitled to be credited with service under this subsection shall also be entitled to credit not more than twelve, eighteen, or thirty months, as the case may be, for civilian employment prior to leaving his position to enter the armed forces or the merchant marine, or to comply with a war transfer."

EFFECT OF JOB CHANGES DURING MILITARY SERVICE: *Paper promotions.*—There is no authority of law to promote civilian employees from grade to grade under the Classification Act while they are on so-called military furlough and not in their civilian positions. Hence, the date of a record or "paper" promotion based upon "seniority," from one classification grade to another while the employee was absent from his civilian position may not be recognized as the

date from which the waiting period begins to run for the purpose of granting within-grade salary advancements in the higher grade upon reemployment after discharge from the armed forces. 24 Comp. Gen. 729, April 9, 1945.

Where the duties and responsibilities of the position to which an employee returns after military service differ from the duties actually performed by him in his former position, the new position is not an allocation or reallocation of his former position and his restoration to the new position in the higher grade would be a promotion rather than a reallocation and effective from the date of the employee's reemployment. His reemployment in the higher grade would be required to be made at the entrance salary of that grade and credit for future within-grade salary advancements would run from the date of his reemployment. B–57699, June 18, 1946.

Reallocations.—Any employee of the Federal Government is entitled, upon restoration to a civilian position, to the benefits of the "reallocation" of the position he occupied when he entered the military or naval service, as well as any within-grade salary advancements which would have been due had he remained in civilian service. Where the position of the employee on military furlough has been reallocated, *in absentia*, service for the purposes of within-grade salary advancements should be computed from the effective date of such reallocation rather than from the date the employee is restored to his civilian position—assuming that the reallocation results in an equivalent increase in compensation within the meaning of the Act. On the date that all *occupied* positions were reallocated to higher grades, all *identical vacant* positions likewise must be considered as having been reallocated as of that date, irrespective of the fact that administrative action assigning such vacant positions to the higher grades was effected at a later date. (Based on the expressed purpose of the Classification Act that in determining the salary for a position in the classified service, the principle of "equal compensation for equal work" shall be followed.) Therefore, an employee on military furlough from a position at the time identical occupied positions were reallocated, is entitled, upon restoration to his civilian position, to the benefits of the reallocation as well as within-grade salary advancements in the same manner and on the same date as the employees whose positions actually were reallocated to the higher grade.

Where on the basis of the duties actually performed administrative action was taken to create "new" positions, for the employees on military furlough, that is, positions which previously had not been carried on the records as currently existing positions, in lieu of the positions formerly held by them, the effective date of the allocation of the new positions would be the date on which such action was

approved by the proper administrative official or such later date as he might determine. If the difference in salary resulting from the reallocation amounted to an "equivalent increase in compensation" within the meaning of the within-grade salary advancement law, the waiting period would begin on the date the new position was specifically assigned to the employee on military furlough, that is, either the date on which the position was allocated if it was then assigned to the employee, or the date the later "identical additional" position was set up specifically designated for the employee on military furlough.

With respect to employees on military furlough whose positions were not converted as of December 1, 1942 from E. O. grades to Classification Act grades as in the case of other employees occupying similar positions, administrative action by the agency is required for each particular position and the fact that certain positions administratively were converted to Classification Act grades would not effect a conversion by operation of law of all similar positions in the same agency. 25 Comp. Gen. 419, November 26, 1945. See also on reallocation from an Executive Order grade to a higher grade under the Classification Act, 25 Comp. Gen. 477, January 3, 1946; 25 Comp. Gen. 502, January 7, 1946; and B–57699, June 18, 1946.

As to reallocations downward or restoration to lower positions, it was held by the Comptroller General that an employee restored to his former position or to one of *lower* seniority, status and pay under the terms and conditions of the Selective Training and Service Act of 1940 is entitled to all within-grade salary advancements which accrued to his benefit by reason of his service in the armed forces in accordance with the provisions of the Federal Employees Pay Act of 1945. However, if he is *reemployed* in a position of a lower grade but at the maximum salary rate provided for in that grade, he cannot receive any within-grade salary advancements in view of the specific provision of the Federal Employees Pay Act of 1945, which excludes from its purview employees who have "attained the maximum rate of compensation for the grade." A proposal to effect a temporary appointment of this employee at the maximum rate of the lower grade with a view to reinstating him to his former grade at a later date, also would operate to defeat his right to a within-grade salary advancement, if such reinstatement constitutes a promotion with a resultant equivalent increase in compensation within the meaning of the Act. 25 Comp. Gen. 495, January 5, 1946.

Effective July 1, 1945, section 402 (b) (4) of the Federal Employees Pay Act of 1945 extended within-grade salary increase benefits similar to those of the Selective Training and Service Act of 1940 to "any employee, (A) who, while serving under permanent,

war service, temporary, or any other type of appointment, has le his position to enter the armed forces or the merchant marine, c to comply with a war transfer as defined by the Civil Service Con mision * * * and (C) who, * * * is restored, reemploye or reinstated in any position subject to this section * * *." I 25 Comp. Gen. 102, July 26, 1945, it was held that this sectio allowed "the counting of all military service and civilian servi prior to military service for the purpose of computing within-grac salary advancements as of July 1, 1945, to any employee who c that date held a permanent position and otherwise met the tern and conditions of the statute and regulations of the Civil Servi Commission, regardless of the fact that such employee may hav been restored or appointed to a permanent position prior to July 1945." See also 25 Comp. Gen. 182, August 13, 1945; 25 Comp. Ge 225, August 24, 1945; B-57699, June 18, 1946.

Effective July 1, 1946, regulations were issued interpreting tl clauses "restored, reemployed, or reinstated in any position subje to this section," to mean "restored, reemployed, or reinstated in ar permanent position within the scope of the compensation schedul fixed by the Classification Act of 1923, as amended, *under regul tions of the Civil Service Commission which provide for mandato restoration or reemployment*, or the provisions of *any law providin for mandatory restoration or reemployment*, or any other admini trative procedure having a similar purpose with respect to employe not subject to civil service rules and regulations." (Chapter Z- Federal Personnel Manual).

Seasonal employees occupying permanent positions under tl Classification Act, as amended, who work part-time during eac year may, upon restoration to their civilian positions after acti military service under conditions entitling them to reemployme benefits, count toward within-grade salary advancements periods c active military service corresponding to the average periods ei ployed each year in their civilian positions. 24 Comp. Gen. 44 December 11, 1944.

If an employee, at the time he entered the active military servic had been in a leave without pay status in excess of one year whi engaged in civilian pilot training, he may, upon restoration to h civilian position after military duty, count the period of civilian pil training as well as the subsequent period of military service towa within-grade salary advancement. 24 Comp. Gen. 891, June 16, 194 23 Comp. Gen. 367, November 16, 1943, distinguished.

Under the Selective Training and Service Act of 1940, a employee who left a position, "other than temporary," to enter tl armed forces and who was restored to his position, or one of li seniority, status, and pay, was entitled to the benefits under th

Act, including within-grade salary advancements, based on the period of service in the armed forces. 21 Comp. Gen. 1007, May 11, 1942; 21 Comp. Gen. 1067, May 29, 1942.

Employees who left temporary positions within the meaning of the Selective Training and Service Act were not entitled to the benefits of that Act, and consequently, could not be given within-grade salary advancements based on the period of their service in the armed forces. The Attorney General's Opinion of May 26, 1943, 40 Op. Atty. Gen. 66, stated that war service appointees held "temporary positions" under the Selective Training and Service Act. See 24 Comp. Gen. 688, March 16, 1945.

In crediting periods of service in the armed forces, merchant marine, or on war transfer under Section 402 (b) (4) of the Federal Employees Pay Act of 1945, an efficiency rating and a certificate of satisfactory service and conduct are *not* required.

War Transfer.—Under the War Service Regulations an employee could be transferred from agency A to agency B at an increase of salary, and with re-employment rights. These transfers with re-employment rights were possible from December 12, 1941 to August 16, 1945. When such reemployment rights are exercised to secure transfer back to agency A and conditions of the regulations are met, the effect is to save the employee from loss of any salary advancement benefits to which he would have been entitled had he not been transferred to agency B. See section 402 (b) (4) of the Federal Employees Pay Act of 1945, and Chapter II, Part II, sections 205 and 206 of the regulations contained in Chapter Z–1 of the Federal Personnel Manual.

When an employee possessing such reemployment rights subsequently transfers back to agency A, his various rights to within-grade salary advancement based on service in agency B, have been considered by the Comptroller General in the following decisions:

(a) If the retransfer to agency A *did not involve the exercise and benefits of his reemployment rights*, and was at a salary lower than that paid him in agency B, the usual rule is followed on the effect of a reduction following a prior increase, i.e., the waiting period begins to run from the date of the last equivalent increase in any branch of the service, in this case the increase incident to transfer to agency B, regardless of the intervening reduction. The same rule would apply if instead of transferring back to agency A, the employee transferred from agency B to agency C. 21 Comp. Gen. 478, November 22, 1941; 23 Comp. Gen. 471, December 31, 1943.

(b) If the retransfer to agency A *involved the exercise and benefits of reemployment rights* and was at a salary lower than that paid him in agency B, but equal to his former salary in agency A plus salary advancements which he would have received had he remained in his original position, the waiting period for his next salary advancement would date from the effective date of the last salary advancement he would have received had he remained in agency A in his original position. 23 Comp. Gen. 471, December 31, 1943.

(c) The same rule would apply if the retransfer to agency A *involved the exercise and benefits of reemployment rights* and was at the employee's former salary in agency A. In this case the waiting period would date from his last equivalent increase in agency A rather than from the increase incident to his transfer to agency B. 23 Comp. Gen. 265, October 8, 1943.

(d) If, however, the retransfer to agency A, although *involving the exercise and benefits of reemployment rights* was at a salary *in excess* of the employee's former salary in agency A plus accrued salary advancements, the waiting period for his next periodic salary advancement would date from the salary increase incident to his transfer to agency B, whether the retransfer to agency A was at a lower salary than paid in agency B or at the same rate. 23 Comp. Gen. 471, December 31, 1943.

The situation is, of course, different when an employee transferred from agency A to agency B at a *decrease* in salary with reemployment rights. In this event, upon transfer back to agency A not *involving the exercise or benefits of these reemployment rights*, the waiting period for the next salary advancement would date from the increase due to restoration of his former salary on his transfer back to agency A. This is in accord with the general rule that a waiting period dates from the last equivalent increase, where rights to reemployment benefits are not involved. 23 Comp. Gen. 594, February 15, 1944.

5. **Equivalent increase.**—To be eligible for a periodic salary advancement, the law provides that the waiting period shall have been served without an "equivalent increase in compensation from any cause." Ordinarily a new waiting period begins to run from the effective date of such an equivalent increase. This is true, regardless of the branch of the civilian service in which the equivalent increase was granted. 23 Comp. Gen. 471, December 31, 1943.

The term "equivalent increase" is defined in the regulations as follows:

(a) "Equivalent increase in compensation" means any increase or increases in basic compensation which in total, at the time such increase or increases are made, are equal to or greater than the smallest compensation increment in the lowest grade in which the employee has served during the time period of twelve or eighteen months, as the case may be.

(b) The following, among others, are not equivalent increases in compensation:

(1) Increases in basic rates of compensation provided by section 405 of the Federal Employees Pay Act of 1945, or section 2 of the Federal Employees Pay Act of 1946;

(2) Rewards for superior accomplishment as provided in sections 403 and 404 of the Federal Employees Pay Act of 1945; (section 7 (f) of the Classification Act of 1923, as amended);

(3) Increases as the result of the establishment of a new minimum rate for any class of positions in accordance with section 401 of the Federal Employees Pay Act of 1945; or

(4) An increase upon restoration of an employee to the grade and salary from which he was previously reduced or demoted, when the restoration is the result of a decision of a statutory efficiency rating board of review, a reduction-in-force appeal, the reallocation of his position to its former grade on appeal, or an appeal under section 14 of the Veterans' Preference Act of 1944.

As used in the law and regulations, the term "equivalent increase" relates to the *per annum rate* of the increase, and not to the actual amount of pay received during the period that the increase may have been effective. 22 Comp. Gen. 1051, May 20, 1943.

The law itself, however, permits one additional one-step increase within each waiting period "as a reward for superior accomplishment," pursuant to Section 7 (f) of the law, and such an increase does not affect the computation of the eligibility date for periodic advancements under Section 7 (b).

Rulings of the Comptroller General on what constitutes or does not constitute an equivalent increase, so as to result in the starting of a new waiting period, are summarized below:

In the following situations there is such an equivalent increase:

(a) With respect to restoration after demotions, it may be stated that generally, a restoration in compensation after

a reduction or demotion is an equivalent increase in compensation and therefore, the waiting period for the within-grade salary advancement begins from the date of restoration. 21 Comp. Gen. 285; *id.* 326. (Note: For an exception to this rule, see 24 Comp. Gen. 226, September 12, 1944.) However, the fact that an employee has been reduced in salary during the prescribed waiting period does not stop the running of the period from the last equivalent increase in compensation. Hence, where an employee's waiting period is completed during the period of demotion he would be eligible for a within-grade salary advancement in the position to which demoted.

In cases where a preference eligible, after dismissal from his civilian position but before restoration to duty (as the result of an appeal under section 14 of the Veterans' Preference Act), accepts a position with another Federal agency, the computation of the prescribed waiting periods for within-grade salary advancements is governed by the same statutory and regulatory provisions that apply in cases of dismissal and restoration without any intervening employment in another agency. The specific rights and benefits accruing to a preference eligible under such circumstances would depend upon the facts involved in each particular case. B–53541, March 4, 1946. See also 25 Comp. Gen. 477, January 3, 1946; 25 Comp. Gen. 502, January 7, 1946.

(b) An employee is transferred to a position in a higher grade, receiving an increase equal to the salary step in the lower grade. Upon completion of this assignment he is transferred back to his former salary and grade. Since he received an equivalent increase at the time of his transfer to the higher grade, a new waiting period begins then, notwithstanding his subsequent restoration to his former grade and salary. 21 Comp. Gen. 478, November 22, 1941. Thus, a temporary promotion from CAF–7, $2,700, to CAF–8, $2,900, lasting a few months, is an equivalent increase, notwithstanding the subsequent demotion to the employee's former grade and salary, or the fact that the actual increase received was less than $100, the increment in CAF–7. The annual *rate* of the increase governs. 22 Comp. Gen. 1051, May 20, 1943.

(c) An employee is temporarily promoted to fill a vacancy caused by the absence of the regular incumbent of the position who left for military service, or to fill a vacancy

in a position paid from a special appropriation for a temporary function, and receives a salary increase equal to or greater than one step in his former grade. (21 Comp. Gen. 773, February 14, 1942.)

(d) An employee is transferred from the States to Alaska and his new position is administratively allocated one grade higher than similar positions in the States in order to pay him a geographic differential. As a result he received an increase of $200 a year. 21 Comp. Gen. 369, 377, October 27, 1941. (However, the addition of an authorized percentage geographic differential to the basic pay rate is not an equivalent increase. See 21 Comp. Gen. 478, November 22, 1941, and 21 Comp. Gen. 947, 953, April 25, 1942).

(e) An employee received, under the Custodial Pay Act of August 1, 1942, an increase exceeding one salary step in his former grade. This increase in his base rate is an equivalent increase which causes a new waiting period to begin. 22 Comp. Gen. 179, September 4, 1942.

(f) An employee of the Bureau of the Census occupying a position subject to the Classification Act is transferred to a temporary roll, which under the Act of June 18, 1929, 46 Stat. 21, is not subject to the Classification Act. Either at the time of transfer or later while on the temporary roll he receives a salary increase equal to or greater than one step in his former grade. This is an equivalent increase and when he goes back on the regular roll the waiting period is computed from the date of the increase received while on the temporary roll. 21 Comp. Gen. 641, January 6, 1942.

(g) Where an employee has received three salary increases neither one of which equaled a one step compensation increment in the lowest grade held but any two of which equaled or exceeded such increment, the 12- or 18-month period which the employee must serve without an equivalent increase in compensation to be eligible for a within-grade salary advancement under the act of August 1, 1941, and the President's regulations thereunder, began to run from the date of the second increase, provided 12 or 18 months did not elapse between the first increase and the beginning of the quarter when the within-grade promotion otherwise is due. 21 Comp. Gen. 1067, May 29, 1942.

(h) An employee received an equivalent increase in a different branch of the service. 23 Comp. Gen. 471, December 31, 1943.

In the following situation there is not such an equivalent increase:

(a) As the result of a promotion an employee receives an increase in salary which is less than the increment of the lower grade.[8] This is not an equivalent increase. In such a case the employee is entitled to a salary advancement of one full step in his present grade. For example, an employee in CAF–4 at $2,160 is promoted to CAF–5 at $2,200. He thus receives an increase of $40, which is less than one salary step in CAF–4. This does not begin a new waiting period. At the end of the current waiting period, he is entitled to an increase to $2,300, if the other conditions of eligibility have been met. 22 Comp. Gen. 151, August 19, 1942. (*Note: In the absence of a decision by the Comptroller General, it is to be assumed that a one-step increase of $210 in CAF–12 is an equivalent increase in CAF–11, although the CAF–11 increment is $220. This problem would arise where a demotion from CAF–12 to CAF–11 follows a within-grade increase in CAF–12.)

(b) An employee's salary is reduced during the waiting period. This has no effect on the employee's eligibility and where the reduction follows a prior increase the waiting period continues to run from the effective date of the prior increase. 21 Comp. Gen. 369, October 27, 1941.

(c) During a 12 or 18 months' period, an employee was granted a one-step increase under section 2 (f) of the salary advancement act for "especially meritorious services." The right to receive a periodic salary increase on the basis of the same 12 or 18 months' period was not affected. 21 Comp. Gen. 855, March 12, 1942.

(d) An employee is transferred from a part-time position to a full-time position at the same or lower rate of pay. For example, a part-time employee working 5 hours (full-time 8 hours) and paid 50 cents an hour was transferred to a full-time position paying $1,200 a year. The full-time per annum equivalent of the part-time rate is computed by multiplying 50 cents by 8 times 360. This results in an equivalent full-time rate of $1,440. Consequently, no equivalent increase was involved. 21 Comp. Gen. 569, December 15, 1941.

(e) An employee's income is increased by overtime compensation or additional compensation in lieu thereof, under the Acts of December 22, 1942, or May 7, 1943. 22 Comp. Gen. 589, 596, January 2, 1943.

(f) An employee is assigned from the continental United States to outside the continental United States and is granted an authorized percentage geographic differential of his basic pay rate either under a special statute or Executive order or pursuant to Civil Service Commission Departmental Circular No. 394, Supplement No. 2. 21 Comp. Gen. 478, November 22, 1941; 21 Comp. Gen. 947, 953, April 25, 1942; 22 Comp. Gen. 769, February 8, 1943; 23 Comp. Gen. 30, July 16, 1943. In such cases the percentage differential is not regarded as an increase in the basic pay rate for the purposes of the salary advancement act. (It is a part of basic compensation, however, in computing retirement deductions, 10 Comp. Gen. 519, 521, and is a part of "earned basic compensation" for the purpose of computing overtime and additional compensation under the Acts of December 22, 1942, and May 7, 1943, B–31212, December 24, 1942.) If, however, a differential is granted by administrative reallocation of the position, the pay increase does constitute an equivalent increase under the statute and a new waiting period starts. 21 Comp. Gen. 369, 377, October 27, 1941.

(g) Regulations of the Engineer Department provide for temporary assignments of certain classes of employees to positions (under the Classification Act or not) paying higher or lower salaries, e.g., a lockman may be assigned for a temporary period of one day or possibly a week as a diver. For this period he receives a higher rate as diver. On completion of this assignment he returns to his regular position and salary. The higher assignment under these circumstances has no effect on the waiting period if it is for a limited period not in excess of 30 days. 21 Comp. Gen. 773, February 14, 1942. This does not change the general rule stated in 21 Comp. Gen. 285 and 21 Comp. Gen. 326.

(h) A demoted employee is restored to his former grade and salary as the result of a decision of the statutory efficiency rating board of review. The employee may be restored to the salary rate of his former grade plus any periodic salary advancement he would have received on

the basis of the amended rating, had he not been demoted. 23 Comp. Gen. 486, January 4, 1944.

6. **Certificate of satisfactory service and conduct.**—Another statutory requirement for a periodic salary advancement is—

That the service and conduct of such employee are certified by the head of the department or agency or such official as he may designate as being otherwise satisfactory. It is within the discretion of administrative officers to withhold for such period as is deemed proper or necessary the administrative certificate as to "otherwise satisfactory conduct" fixed by the act as one of the conditions necessary for salary advancement thereunder. 21 Comp. Gen. 326, October 13, 1941; 23 Comp. Gen. 941, June 9, 1944.

C. EFFECTIVE DATE OF PERIODIC SALARY ADVANCEMENTS

Within-grade salary advancements become effective at the beginning of the next pay period following the completion of the required waiting period and compliance with the other conditions of the statute. Each pay period covers two administrative workweeks which means 14 consecutive calendar days so far as the computation of pay (both basic and overtime) is concerned. Since Sundays do not stand alone for pay purposes, they must be regarded as included within some pay period. If a pay period ended with Saturday, July 14, 1945, and Sunday, July 15, 1945 was the beginning of the next pay period, an employee who completed the required period of service on Sunday, July 15, 1945 would not be entitled to the automatic within-grade salary increase until the beginning of the next pay period after July 15, which would be Sunday, July 29, 1945. (25 Comp. Gen. 121, July 28, 1945.)

An employee may not by consent postpone the effective date of the advancement. 21 Comp. Gen. 722, January 30, 1942.

In applying the provisions of the Act of December 21, 1944 (the Lane Act), respecting lump-sum payments for accumulated and current accrued annual leave, an employee may not receive a within-grade pay increase to which he otherwise would be entitled if he resigns prior to the *effective* date of the periodic within-grade salary advancement.

"The last day of active service of an employee receiving a lump sum payment for leave is the date of separation from the service and any period between that date and the date of reemployment, either in the same or a different agency, must be regarded as a break in service for the purpose of determining rights to within-grade promotions, transfer of sick leave, and reemployment benefits, even though the period used for computing the lump sum payment for leave

otherwise would bridge over the break in service in whole or in part. 24 Comp. Gen. 511, January 11, 1945."

Accordingly, an employee who completes his period of eligibility for a within-grade pay increase during the quarter ending December 31, 1944, and who resigns the last working day prior to December 31, 1944, with sufficient annual leave to carry him beyond the effective date of the periodic salary advancement, is *not* entitled to receive compensation at the increased rate effective as of January 1, 1945, in computing the lump-sum payment for leave. However, if his last day of active duty was prior to December 21, 1944, and he was in a terminal leave status on or prior to that date, the act of December 21, 1944, requiring payment of a lump-sum for terminal annual leave, would have no application, and thus, the employee would be entitled to payment for the period of his terminal annual leave in the usual manner, *including* the benefit of the within-grade promotion effective as of January 1, 1945. 24 Comp. Gen. 526, January 13, 1945.

D. AMOUNT OF PERIODIC SALARY ADVANCEMENT

The amount of each periodic salary advancement is one step of the salary range of the particular grade occupied by the employee on the date such salary advancement is payable. 21 Comp. Gen. 285, October 2, 1941. Section 7 (b) of the Classification Act of 1923, as amended, provides for advancement in compensation "successively to the *next higher rate* within the grade."

E. RIGHT TO SALARY ADVANCEMENT

The statutory words "shall be advanced in compensation" are "imperative and mandatory," and, therefore, if an employee meets the terms and conditions of the statute, he is entitled as a matter of right to the periodic advancement in salary. These mandatory provisions render inoperative that portion of section 7 of the Classification Act prohibiting increases in salary "unless Congress has appropriated money from which the increases may lawfully be paid." Existing salary appropriations are available for such payment, regardless of the fact that a deficiency may be incurred. 21 Comp. Gen. 335, October 14, 1941. See also 22 Comp. Gen. 923, March 29, 1943, and 25 Comp. Gen. 55, July 14, 1945, on right to salary advancement where the amount of the increase would bring the total salary over the statutory limit for the type of appointment held.

An administrative error in not granting an employee a within-grade salary advancement to which he is entitled may not defeat or delay the employee's right to the advancement, and administrative action correcting the error is not to be regarded as a retroactive-

effective promotion such as is prohibited under the general rule applicable to promotions. 21 Comp. Gen. 369, October 27, 1941.

An employee has a vested right to retain a within-grade salary advancement so long as he remains in the position in which the advancement was granted. After he has actually received such advancement, there is no authority to reduce his salary in the same grade and position for disciplinary reasons based upon subsequent misconduct. Disciplinary action may, however, consist of reduction in grade and salary by reassignment to another position. 23 Comp. Gen. 941, June 9, 1944. However, when he is transferred, promoted, or demoted to another position with different duties and responsibilities, whether in the same or a different grade, it is discretionary (but not mandatory) with the department—if funds are available—to fix the employee's salary at any rate in the new grade (not exceeding his rate in his former position) which will save to the employee the benefits of a salary advancement previously received. 21 Comp. Gen. 791, February 21, 1942; 21 Comp. Gen. 855, March 12, 1942.

In other words, the salary advancement act did not modify the usual previously existing rules for fixing the initial salary of an employee when he is transferred, promoted, or demoted between grades or positions. 21 Comp. Gen. 791, February 21, 1942; 22 Comp. Gen. 489, November 23, 1942.

Where it was the policy of an agency to save an employee's periodic advancement attained by reason of length of efficient and satisfactory Federal service, regardless of the position in which employed, and through error the employee's salary advancements were not saved in fixing the rate at which he was transferred to the agency, the error may be corrected by the agency retroactively effective from the date of the transfer. 24 Comp. Gen. 341, November 2, 1944; 21 Comp. Gen. 791, amplified.

When a within-grade salary advancement would bring the combined salaries of an employee over the limit set by dual compensation statutes, the holding of one position becomes invalid. In 24 Comp. Gen. 52, July 25, 1944, it was held with respect to the holding of a civilian position by a retired Army officer receiving his retirement pay that "the advancement of an employee within the salary range of the grade in which his position has been allocated now is controlled by statute and (provided that all of the terms and conditions of the statute to authorize the advancement have been met) may not be delayed or defeated by the action of the administrative office or the employee even though a periodic advancement may preclude the employee from remaining in that position because of the prohibition contained in the 1894 statute, as amended. * * * Accordingly, the holding by the retired Army officer of the civilian position became invalid on October 1, 1943, when the salary attaching to the

position equalled $2500 per annum and the payment to him of salary in such position for any period on and after that date was in direct contravention of law and must be refunded. See 14 Comp. Gen. 179, 289; 21 *id.* 1129."

F. SALARY INCREASES AS REWARDS FOR SUPERIOR ACCOMPLISHMENT

In addition to periodic salary increases, the salary advancement law provides for additional one-step increases within each waiting period as "rewards for superior accomplishments," (before July 1, 1945, "for especially meritorious services"). Subsection (f) of Section 7 of the Classification Act of 1923, as amended, reads as follows:

> "(f) Within the limit of available appropriations, as a reward for superior accomplishment, under standards to be promulgated by the Civil Service Commission, and subject to prior approval by the Civil Service Commission, or delegation of authority as provided in subsection (g), the head of any department or agency is authorized to make additional within-grade compensation advancements, but any such additional advancements shall not exceed one step and no employee shall be eligible for more than one additional advancement hereunder within each of the time periods specified in subsection (b). All actions under this subsection and the reasons therefor shall be reported to the Civil Service Commission. The Commission shall present an annual consolidated report to the Congress covering the numbers and types of actions taken under this subsection."

The current regulations and standards for rewards for superior accomplishments are contained in Departmental Circular No. 540, October 5, 1945, and will appear in Chapters P–1 and Z–1 of the Federal Personnel Manual.

An employee's right to a periodic salary advancement is not affected by his having received an especially meritorious increase during the same waiting period. 21 Comp. Gen. 855, March 12, 1942.

An increase for especially meritorious services may be granted before the employee becomes eligible for a periodic salary advancement at any time during each waiting period, regardless of whether or not the effective date of such especially meritorious increase is at the beginning of a quarter, so long as it is not retroactive. 21 Comp. Gen. 791, February 21, 1942.

A period of 12 or 18 months is not required to elapse between meritorious—as distinguished from periodic—within-grade salary advancements, but only one such meritorious advancement may be made within each of the 12 or 18 months' periods applicable to periodic advancements. See 21 Comp. Gen. 855, March 12, 1942.

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